United States Court of Appeals for the Second Circuit



APPENDIX

ONLY COPY AVAILABLE 74-2141

United States Court of Appeals FOR THE SECOND CIRCUIT

D-Z INVESTMENT COMPANY.

Plaintiff-Appellee,

against

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, Dr. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR and DALLAS S. TOWNSEND, Jr.,

Defendants-Appellants,

NJB PRIME INVESTORS,

Defendant,

and

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, SEYMOUR WEINBERG and RONALD D. FEINMAN,

Additional Defendants to Counterclaims.

On Appeal from the United States District Court for the Southern District of New York

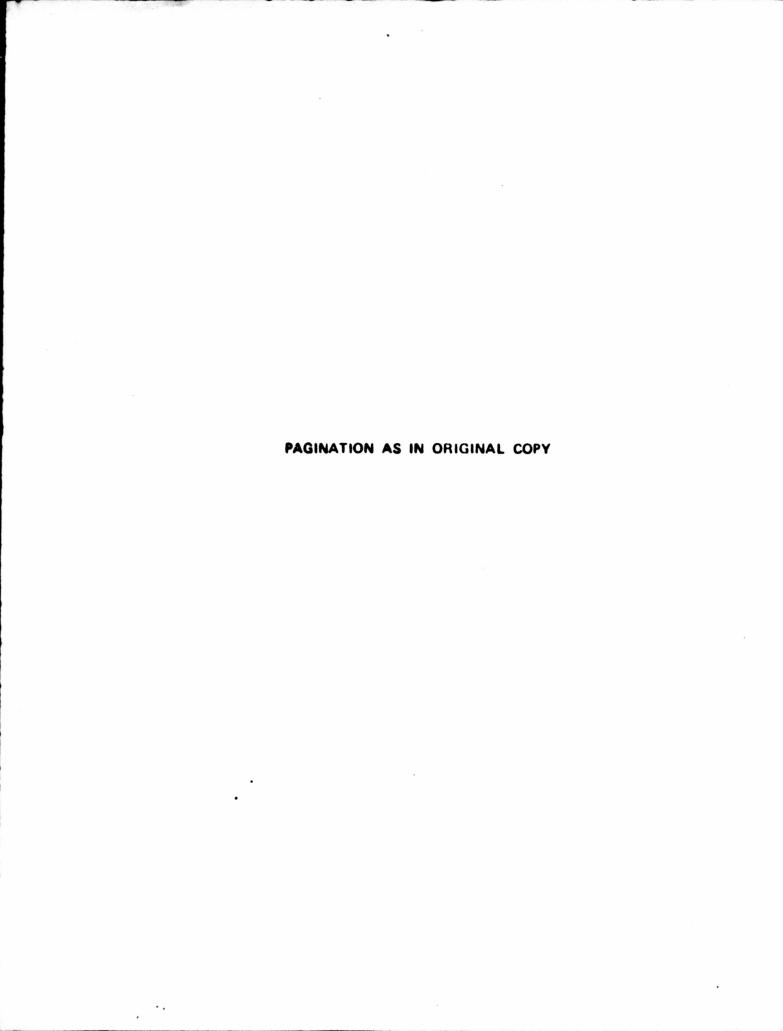
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Wachtell, Lipton, Rosen & Katz Attorneys for Defendants-Appellants 299 Park Avenue New York, New York 10017

Rubin Wachtel Baum & Levin Attorneys for Plaintiff-Appellee 598 Madison Avenue New York, New York 10022



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EXCERPTS FROM DEPOSITION OF HAROLD B. LEVIN

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY. Plaintiff. CIVIL ACTION -vs-No. 74 Civ. 2379 ROBERT E. HOLLOWAY, MELVIN (IBW) S. TAUB, MAURICE J. BRICK. PETER E. SIMOH, NORMAN BRASSLER, CHARLES GILLER, HERRERT E. HARPER, DR. GORDON) McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR. and NJB PRIME INVESTORS. Defendants.

beposition of HAROLD B. LEVIN, M. D., taken by the Defendants, pursuant to notice and subpoens and the Federal Rules of Civil Procedure, before Forrest M. Brown and Stuart S. Huseby, Court Reports and Notaries Public, at 2700 First National Bank Tower, Atlanta, Georgia, on the 18th day of July, 1974, commencing at the hour of 10:15 a.m.

Excerpts from Deposition of Harold B. Levin

APPEARA	NCES OF COUNSEL:	
F	or the Plaintiff:	STEPHEN A. MARSHALL, Esq.
F	or the Individual Defendants:	PETER D. McKENNA, Esq.
	or the Defendants Security Manage-	S. ALAN COHN, Esq.
	ment and Ralph Becker:	
	or the Defendant NJB Prime Investors:	DAVID PARKER, Esq.
ø F	or the Deponent:	S. JARVIN LEVINSON, Esq. HUGH W. GIBERT, Esq.
	~ ~	DAVID ROSS, Esq.
	HAROLD B. LE	VIN, M. D.,
being f	irst duly sworn, was	examined and deposed as
follows		

3 * * *

21	EXAMINATION

1	7	M	ľ	R		M	٢.	0	ĸ	1	E.	N	1	ĭ	A	•

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Q First of all, would you tell me your full name?

A Harold B. Levin.

1	Q	And what is your present address?
2	A	Home or occupation?
3	Q	Residence address.
4	A	113 Valley Road, N. W., Atlanta.
5	Q	And do you have an office here in Atlanta?
6	A	Yes.
7	Q	And where is that?
8	A	1293 Peachtree Street.
1	ii	* * *

7 * * *

20	Q	(By Mr. McKenna) Mr. Levin, what is your
21	occupation?	
22	A	Physician.
23	Q	And do you have any area of specialization?
24	A	Dermatologist.
25	Q	Did there come a time when you purchased
1		

A 1300

Excerpts from Deposition of Harold B. Levin

		8
1	a note of D-2 Investment Company?	
2	A Yes.	1
3	Q And do you have that note with you?	
4	A No.	•

* * *

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notes, since I have asked him if it is the note he purchased from D-Z.

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THE WITNESS: Repeat the question.

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Q (By Mr. McKenna) At or about -- at or before the time that you received the note which you purchased from D-Z Investment Company, did you receive any other documents pertaining to that note?

7

MR. MARSHALL: I am going to object

9

again to documents pertaining to the note.

10

What does that mean?

11

MR. McKENNA: That means any documents

12

which related to the notes, which discussed the note, which in any way percained to the

13

note, which you in any way understood per-

14 15

tained to the note.

16

THE WITNESS: There were several

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papers with the promissory note, and f don't

18

recall the exact contents and whether it

19

was about four pages or twelve pages I

20

don't know. I just briefly glanced at it.

21

MR. GIBERT: Dr. Levin, answer the

22

question and then stop, so that we can

23

move along, please.

24

Q (By Mr. McKenns) Did you receive any of the other papers that you just testified about before

Excerpts from Deposition of Harold B. Levin you received the promissory note that you had executed? 1 2 I don't recall. 3 You don't recall one way or the other? 4 Don't recall. I receive a lot of notes, 5 a lot of papers, I don't put down the exact time, I 6 don't recall. 7 Can you tell me the date that you purchased the note of D-Z Investment Company? 8 9 April the 29th. I happened to --10 MR. GIBERT: That is sufficient, 11 April the 29th. (By Mr. McKenna) Any documents that you --12 Q did you receive prior to that date any documents 13 14 relating to your --MR. GIBERT: I will object to that. 15 He has already said he doesn't know whether 16 he received documents before or after the 17 18 purchase of the note. MR. McKENNA: Well, I am trying to 19 be very sure that I have covered the area, 20 and I would also request, Mr. Gibert, that 21 you let me finish my question before you 22 state your objection.

> (By Mr. McKenna) Do you recall now having Q

Excuse me.

MR. GIBERT:

24

23

	Excerpts from Deposition of Harold B. Levin
1	received I will withdraw the question. Where ald
. 2	you obtain that note on April 29th?
3	A At my home.
4	Q And how did it get there?
5	A Mr. Zimmerman came to my home at my reques
6	Q And did you execute the note on that date?
7	I withdraw the question.
8	The Mr. Zimmerman who delivered the note
9	to your house was Jerome Zimmerman?
10	A Yes, sir.
11	Q Was anybody else present when he delivered
12	the note?
18	A They were in the home but I don't know
14	Q No, present, I mean were in the room when
15	Mr. Zimmerman delivered the note?
16	A No.
17	Q At the time he delivered the note, do you
18	recall whether you executed or signed any documents?
19	A I signed a check before he delivered me
20	anything.
21	MR. GIBERT: Excuse me.
22	THE WITNESS: I think at least at the
23	time I didn't receive anything until I signed,
24	at least what is your question?

MR. GIBERT: Dr. Levin, he asked you --

1	Q (By Mr. McKenna) He delivered you a note
2	in your home on April 29th, what I am asking you is
3	at that time did you sign anything? You have testified
4	you signed a check before anything, I am asking at
5	that time did you sign a receipt, any letter or any
6	other documents on the date that you obtained the note?
7	MD CIPEDE Non lot me inch can

MR. GIBERT: Now, let me just say to the witness, the answer to that question is either yes, you did, or no, you didn't, or you do not recall. Do not discuss things that you signed either before you efter. He has asked at that particular time.

THE WITNESS: All right. Now, repeat your question.

(By Mr. McKenna) At the time, on the day 0 that Mr. Zimmerman delivered the note to you at your house on April 29th, did you at that time sign any documents in connection with the delivery of the note to you? Did you sign any documents that lir. Zimmerman brought to you?

I don't recall.

You don't recall having signed any docu-Q ments?

Well, I signed a check, to me, that is a document, too. I don't know what you call a document.

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1	Q I am saying at that time, that very day,
2	you have indicated you signed the check previously.
3	A I am confused. I remember signing a check,
4	and I know the date of the check.
5	Q What is the date of the check?
6	A April the 29th.
7	Q Did you sign the check while Mr. Zimmermen
8	was there?
9	MR. GIBERT: He has already testified
10	he signed it before.
11	THE WITNESS: I signed it before I had
12	Q (By Mr. McKenna) Did you deliver the
13	check to Mr. Zimmerman at the time he brought you the
14	notes or previously?
15	A Previously.
16	Q Rut on the same day?
17	A (Nodding affirmatively.)
18	Q And where did you deliver the check to
19	Mr. Zimmerman?
20	MR. GIBERT: Excuse me. Let me say
21	Dr. Levin answered that question with a
22	nod of the head. Dr. Levin, you cannot
23	the court reporter does not take nods.
24	They ignore them completely really.
25	MR. McKENNA: Wall, what was the

1	question?
2	(The question was read by the reporter.)
3	Q (By Mr. McKenna) When you nodded, you
4	meant yes?
5	A Yes.
6	Q And my question, pending question is, wher
7	did you deliver the check to Mr. Zimmerman?
8	A At my home. I called him to come well,
9	that's all right.
10	Q Mr. Zimmerman come to your home more than
11	once on that day?
12	A I don't recall.
13	Q When did you first hear of either D-2
14	Investment Company or the venture in which you now
15	D-Z Investment Company is engaged?
16	MR. MARSHALL: I am objecting to the
17	form of the question, specifically to the
18	use of the term "venture."
19	MR. GIBERT: Yes, I would object and
20	ask that you clarify what you mean by the
21	venture that D-Z is now engaged in.
22	MR. McKENNA: Whatever activity,
23	business activity, that D-Z is now engaged
9.1	in.

MR. MARSKALL: Sounds like a double-

to the question. I believe the witness has

A 1308 Excerpts from Deposition of Harold B. Levin

1	said he doesn't recall.
2	THE WITNESS: I don't recall.
3	MR. McKENNA: I am entitled to inquire
4	as to exactly what he recalls.
5	MR. MARSHALL: I believe he answered
6	your question just now.

MR. GIBERT:

25

Excuse me --

	Excerpts from Deposition of Harold B. Levin
1	THE WITNESS: It was a social
. 2	function. We were at some sort of sociel
3	function, but I don't recall anyone being
4	present.
5	Q (By Mr. McKenna) Just during the discussion
6	I'm not talking about at the social function.
7	A To my knowledge, no one was present, just
8	he and I.
9	Q In that discussion, did Mr. Zimmermen
10	mention D-Z Investment Company by name?
11	A Yes, he did.
12	Q Did he tell you at that time that D-Z
13	Investment Company had already been formed?
14	MR. GIBERT: If you recall. Don't
15	speculate.
16	THE WITNESS: I don't recall.
17	Q (By Mr. McKenna) Prior to that discussion
18	which you have just related you had with Mr. Zimmerman,
19	had you been approached by anybody else with respect
20	to a possible investment of the nature which you have
21	ultimately made in D-Z Investment Company?
22	A No.
23	Q Did you have more than one discussion with

Mr. Zimmerman concerning your proposed investment in

D-Z Investment Company?

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professionally at the time. There could have been some

word dropped about it. I really can't recall, but I

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0.	Excerpts from Deposition of Harold B. Levin
	was treating him professionally for a skin disease.
	Q Do you recall any specific discussions
	other than the first one and the time he delivered the
	note?
	A I don't specifically recall other than a
	haphazard mention.
	Q Did you ever have any discussions with
	anybody else concerning potential investments of D-Z
	Investment Company prior to the date that you actually
	purchased the note?
	MR. GIBERT: Mr. McKenna, I am
	going to object to your continual reference
	to this note as an investment. It is a
	note. He purchased a note. You are
	talking about potential investments in
	D-Z that may possibly refer to something
	else. If you are asking about the note
	MR. McKENNA: Okay.
	MR. GIBERT: I wish you would
	refer to the note.
	Q (By Mr. McKenna) About your purchasing a
	note of D-Z Investment Company. I will amend my questica
	to say, did you

Prior to my investment?

24

25

From the time Mr. Zimmerman first broached Q

	Excerpts from Deposition of Harold B. Levin 35
1	the subject with you until April 29th when you actually
2	purchased the note, did you have may discussions with
3	snybody clse concerning the potentiality of your
4	purchasing a note of D-Z Investment Company?
5	A I did not.
6	Q Do you recall the nature of the social
7	event at which you had this first discussion with Mr.
8	Zimmerman?
9	A I don't.
10	Q Do you recall where it was?
11	A There was several parties. His daughter
12	was recently married and, you know so the answer is
13	I don't recall. There were several times we were
14	together, a series of parties.
15	Q Did you make any notes or memos of what
16	Mr. Zimmerman told you in this first discussion?
17	A (Witness shakes head negatively.)
18	Q Your answer is "no?"
19	A No, no.
20	Q Do you keep a diary or an appointment book
21	in which you indicate your social appointments?
22	A No.
23	Q Does your wife keep one?
24	A She keeps hers, yes, sir.

Does she keep dates of your social engagements?

25

Q

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	Excerpts from Deposition of Harold B. Levin
1	A Not to my knowledge.
2	Q Does she keep a record of appointments for
3	social engagements involving both of you?
4	A Important social engagements.
5	Q Do you know whether the social engagement
6	which you had this discussion with Mr. Zimmermen was
7	an important social engagement?
8	A No, I don't.
9	Q Between the time that you had this first
10	discussion with Mr. Zimmerman and April 29th when you
11	actually purchased the note, did you receive any
12	correspondence from Mr. Zimmerman?
13	A Between that time
14	MR. GIBERT: Excuse me, do you
15	mean
16	MR. McKENNA: I mean at all that
17	he can recall.
18	MR. GIBERT: Any kind of correspon-
19	dence?
20	MR. McKENNA: Yes.
21	THE WITNESS: I have a sheaf of
22	papers there that I looked through last
23	night.

MR. GIBERT: Excuse me, Dr. Levin.

The question was, did you receive any

25

	Excerpts from Deposition of Harold B. Levin
1	correspondence of any kind from Mr.
2	Zimmerman between the time of that
3	discussion at the social engagement and
4	the time when you purchased the note.
5	Now, the answer to that question is
6	"yes," or "no," or "I don't recall."
7	THE WITNESS: I don't recall.
8	Q (By Mr. McKenna) Did you receive, ever
9	receive any correspondence from Mr. Zimmerman concerning
10	your purchase or potential purchase of the note in D-Z
11	Investment Company?
12	A I don't recall. I know I have a sheaf of
13	papers that when I
14	Q When you saw that
15	A that I have at home.
16	Q When you looked at that sheaf of papers,
17	was there any such correspondence in it that you can
18	recall now?
19	A There were several things there.
20	MR. GIBERT: Excuse me. He asked
21	about correspondence.
22	MR. McKENNA: I am referring
23	MR. GIBERT: He means a letter.
0.1	MR. McKENNA: I mean a letter or

memo or some such correspondence as that.

Excerpts from Deposition of Harold B. Levin

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THE WITNESS: None to my knowledge.

Q (By Mr. McKenna) Did you have any correspondence from anybody else concerning your purchase or possible purchase of a note of D-Z Investment Company between the dates of your first discussion with Mr. Zimmerman and April 29th?

A Not to my knowledge, no.

Q Did you receive any correspondence with respect to that subject matter after A zil 29th from anybody else? I am leaving out of that, obviously, the subpoena and my letters, okay? And my paytner's letter.

A I don't recollect.

Q Did you notice any such correspondence when you went through this sheaf of papers you have just referred to?

A I noticed there was some -- a bunch of papers there. I don't read all the details because this --

MR. GIBERT: Dr. Levin, you have answered the question.

Q (By Mr. McKenna) Did you review the papers you have referred to, the sheaf of papers, did you actually review them last night when you got them together or did you just look to see what was there, or

Excerpts from Deposition of Harold B. Levin

1	what?
2	MR. GIBERT: I don't know that
3	the testimony was that he did it last
4	night.
5	Q (By Mr. McKenna) Whenever you did it, I'm
6	sorry, after you were served with the subpoena.
7	A I glanced at the date of the promissory
8	note.
9	Q Did you do anything else?
10	A I just flipped through all the sheet. There
11	is a lot of legal jargon that I don't
12	MR. GIBERT: Excuse me. You have
13	answered the question.
14	Q (By Mr. McKenna) Well, in the first
15	discussion that you had with Mr. Zimmerman, what did
16	he tell you about D-Z Investment Company?
17	A He said he was that the corporation was
18	going to be formed and
19	MR. GIBERT: Dr. Levin, now, the
20	question relates to the particular
21	conversation. I want you to try to
22	remember the conversation and answer
23	the question as accurately as you can.
24	Try to avoid supplying information you
25	learned later or anything else. The

learned later or anything else. The

Excerpts from Deposition of Harold B. Levin

question relates to what Mr. Zimmerman told you at that conversation.

THE WITNESS: I don't recall.

Q (By Mr. McKenna) You don't recall anything else other than he told you that the company was going to be formed? Did he tell you what the purpose of the company would be?

A I understood that this company -- that there was to be -- that -- ncw, you telking about what he told me?

Q What he told you, yes.

A I don't know the exact date, but we had a discussion. I think it was shortly before I --

MR. GIBERT: Excuse me. We are talking about the conversation at the social function which you have referred to.

MR. McKENNA: I am talking about the first discussion you had with Mr. Zimmerman. But for present purposes, I want to know what he told you at that first discussion.

MR. GIBERT: If you recall. And try not to supply other conversations, other information. The first conversation, what was said at that time by Mr. Zimmerman, if you recall.

Excerpts from Deposition of Harold E. Levin

going to form a corporation and that if I wanted to participate and supply money, that it was -- it might prove to be a speculation, but that -- and I might only make some interest and nothing else. But he felt that he and Bruce Davis -- what I gathered from it, that they planned to invest in an R.E.I.T., Real Estate Investment Trust. That's it.

Q (By Mr. McKenna) On that occasion, did Mr. Zimmerman show you any documents relating to this company that he was talking about?

MR. GIBERT: You have to answer in words.

THE WITNESS: I remember him showing me a piece of paper that said A, B, C, D, that if you take these several R.E.I.T.'s and they have various book values, and they are selling for less money. He didn't identify any one of them, but he said some of them are underpriced because of the poor market condition, or because of -- for various reasons.

MR. GIBERT: Excuse me. Are we still

Excerpts	from	Dep	ositi	on	of	Harold	В.	Levin
talking	, abo	ut	that	fi	irst	conve	rs	ution?

THE WITNESS: I don't know whether this was the first conversation or not.

Well --

MR. McKENNA: The best of your recollection, was it in that first conversation?

THE WITNESS: I don't recall.

MR. GIBERT: Let me caution you once again. The question was not what have you been told or shown at any time, but what was said at that first conversation.

Please. I know how difficult it is not to supply information you have learned later, but try to stick just to that question. What were you told by Mr.

Zimmerman on that occasion?

THE WITNESS: Truthfully, to the best of my knowledge, I don't recall the exact conversation, but it had to do that he and Bruce Davis were forming a corporation, that I might participate.

Q (By Mr. McKenna) Did you know Mr. Davis prior to that time?

A Yes, I did.

	Excerpts from Deposition of Harold B. Levin
1	Q Did you know him personally?
2	A I don't know him personally.
3	Q Well, when you say you know him, you knew
4	of him by name?
5	A I knew of him by name; I had been in o
6	previous investment.
7	Q Was that 14th Street?
8	A 14th Street Corporation. That's the only
9	way I knew of him.
10	Q And Mr. Davis' company was involved in that
11	also?
12	A Yes, sir.
13	Q But other than that, did you have any
14	business connections with Mr. Davis?
15	A None.
16	Q How did you get involved in 14th Street?
17	MR. MARSHALL: Excuse me. I am
18	objecting to the form of the question.
19	MR. McKENNA: Go ahead.
20	THE WITNESS: What did he say he
21	was objecting to?
22	MR. McKENNA: The form of the
23	question.
24	MR. GIBERT: You understand what he

Excerpts from Deposition of Harold B. Levin

	44
1	THE WITNESS: You may involved?
2	Q (Ey Mr. McKenna) Yes, did you come in
3	through Mr. Davis, Mr. Zimmerman or somehody else?
4	A Mr. Zimmerman.
5	Q Now, you said that Mr. Zimmerman, in his
6	first conversation, said you might only make some interest
7	on this particular investment.
8	MR. GIBERT: Excuse me
9	THE WITNESS: I don't know that he
10	said that the first day, no, no, no.

Excerpts from Deposition of Harold B. Levin

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8	Q (By Mr. McKenna) My question, Dr. Levin
9	now is: Do you recall whether or not it was at that
10	first meeting you had, the first discussion with Mr.
11	Zimmerman, in which he said to you, in words or
12	substance, that if you wanted to participate and
13	supply money to D-Z Investment Company, it might
14	prove to be speculation or it might only you wight
15	only make some interest and nothing else?
16	A I don't recall that it was the first con-
17	versation, it may have been later.
18	Q You recall he did say that to you in
19	words or substance at some time?
20	A At some time.
21	Q Now, can you recall anything else specifi-
22	cally that he said at the first meeting as opposed
23	as distinct from other meetings?
24	A No.

You indicated that at some point he showed

Q

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Excerpts from Deposition of Harold B. Levin

you a piece of paper concerning certain real escate

investment trusts. Do you recall any piece of paper

which you -- do you distinctly recall any piece of

paper or papers that were shown to you at the first

meeting as opposed to at some other time?

MR. MARSHALL: Excuse me, I am going to object because my recollection and my notes are a little different than the assumptions that are contained in your question. I thought he said something about A. B. C. D., on a piece of paper. I don't recall him testifying that specifically he was shown documents concerning rates. If my recollection is wrong, well --

Q (By Mr. McKenns) Without characterizing what you testified that you were shown, do you recall do you have any distinct recollection of being shown any papers or any documents at the first meeting with Mr. Zimmerman, at which you discussed --

- A I don't.
- Q -- D-Z Investment Company?
- A I don't recall seeing any papers at the first meeting, the first discussion of my becoming an investor.
 - Q Is it your best recollection that you were

	Excerpts from Deposition of Harold B. Levin
1	not shown anything like that at the first meeting? 52
2	A Shown nothing at first.
3	Q This was a social occasion?
4	A This was a social occasion, yes.
5	Q Do you recall at some later date that you
6	were shown some documents?
7	A Yes.
8	Q Do you recall whether you were shown these
9	other documents in relation to the first meeting?
10	MR. GIBERT: I am not sure, perhaps
11	the witness
12	MR. McKENNA: Let me withdraw the ques-
13	tion, and I will take a different sequence.
14	Q (By Mr. McKenna) What was the upshot of
15	that first discussion with Mr. Zimmerman? Did you
16	discuss whether you would talk about it again or
17	what?
18	A I said, oh, the suggestion was that when
19	the I said, well, we understood there was
20	nothing was mentioned specifically, but that if some-
21	thing developed he would contact me. He knew that I
22	had money, at least, that I was an investor, or at
23	least, that I was in a position
24	MR. GIBERT: Excuse me, Dr. Levin.

He asked "What was the upshot of what was

the course of your treating him for a skin discuse,

do you recall any other discussions with Mr. Zimmerwan,

	Exc	erpts	from	Depo	sition of	Harold	B. L.	evin		
		•	•	•	•				delivered	54
the	no	ote to	you	u ?						

A I would guess that --

MR. GIEERT: Don't guess, you are supposed to testify what you recall.

THE WITNESS: Well, I recall at

one -- I don't know the date now, but I

recall that at one -- on one occasion, he

showed me a piece of paper that had A, B, C, and

D, with book values and selling prices,

and question now --

- Q (By Mr. McKenna) I'm sorry, go ahead.
- A That's all.
- Q Now, are you saying that you recall that this was an occasion other than at some time he was in your office for treatment?
 - A Oh, yes, this was at my home.
- Q Do you recall whether that was in relation to April 29th, when you ultimately purchased the note?
- A Well, I know it was several weeks before that, but it could have been about a month shead.
- Q Was anybody else present besides yourself and Mr. Zimmerman?
 - A No.

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	Excerpts from Deposition of Harold B. Levin
1	Q Do you recall, other than showing you this
2	piece of paper which you have described, do you recall
3	any other documents he showed you at that time?
4	A He may have showed me other documents, but
5	I don't recall them.
6	MR. GIBERT: You have answered the
7	question unless you
8	THE WITNESS: That is all right.
9	Q (By Mr. McKenna) Do you recall on any
10	other occasion that Mr. Zimmerman showed you any
11	other documents other than April 29th when you purchase
12	the note?
13	A Well, we have just spoken about this
14	occasion when he showed me
15	Q Yes, any other than that, I am saying other
16	than what you have already testified to and other than
17	April 29th date on which you received the note, do
18	you recall any other occasions on which Mr. Zimmerman
19	showed you documents?
20	A I don't recall, but I know I have got some
21	documents along with my promissory note.
22	Q Do you recall when you
23	A 'But I don't recall when I received it or
24	if he handed it to me or what the date was, you know,

I just have a group of papers.

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Excerpts from Deposition of Harold B. Levin

1		Q	Do you	re	ecal]	i wheth	er Er.	Zim	norman	sent 56
2	you	any	documents	in	the	mail?	This	is in	connec	ction

with D-Z Investment Company, now, my question is.

I don't know, not specifically, but he could have handed me something to read and look at it and I don't recall it.

I am asking for a very specific question. Do you recall receiving anything in the mail as opposed to it having been handed to you or delivered to you?

MR. GIBERT: Relating to D-Z?

(By Mr. McKenna) Relating to D-Z. Q

The answer is I don't know, but I would like for you to know I get voluminous mail at my office, concerning personal, important, confidential mail, and first-class mail I take home and it could be that I had something. By the time I am sorting my mail, physicians receive voluminous mail, and I don't recall.

> MR. GIBERT: Dr. Levin, I think everybody will take judicial notice, as lawyers say, that physicians receive a lot of mail, and it is entirely understandable that you don't remember any particular thing, you don't remember.

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particularly, I don't remember it.

Excerpts from Deposition of Haroli B. Levin

THE WITNESS: I don't remember

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MR. GIBERT: Just try and remember or say what you do remember.

Q (By Mr. McKenna) Do you recall anything that was discussed at the meeting with Mr. Zimmerman at your home, in which he showed you the pieces of paper which you -- about certain -- with A, B, C, D, et cetera, respecting certain REIT's?

A Do I recall what?

Q Do you recall any discussion at that meeting, anything he told you?

A Yes, I do.

Q And what was told you, what did he tell you?

much money we are talking about, and he mentioned a figure of about \$50,000, and I told him that I didn't want to put that kind of money up in anything unless I knew what I was getting into. And he said, "Well, I am not at liberty to tell you the name of the company." And I said, "Well, those figures, A, B, C, D, they don't mean much to me and I want to know what company we are talking about." And he says, "I am sorry, I can't divulge that information." So I told

him, "Weil, I would have to think about it before I would go putting up any money." And he said, "Well, I will call you or you call me, but I am sorry, I can't give you that information."

O You said --

A Oh, wait just a minute. That's all right.

about a company that he was not at liberty to identify to you, and which you felt you needed information about.

What discussion was there about that company?

A He said -- understand that he was talking about real estate investment trust.

Q And was -

A Several, several REIT's, I didn't know what REIT's are until I started reading up about them.

Q Well, what did Mr. Zimmerman say to you with respect to what D-Z Investment Company was going to do with respect to the one or more of these REIT's?

MR. MARSHALL: Excuse me, Mr. McKenna, I don't believe that's been the testimony so far. All I have been able to ascertain from the witness' testimony, that at some point in time there was a discussion concerning certain REIT's or REIT's in general, and A, B, C, D, and I don't know that that

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Q (By Mr. McKenna) Did Mr. Zimmerman -- 616
Mr. Zimmerman say anything about what D-Z -- what
would be D-Z's interest in these REIT's or what his
intentions were with respect to any of these REIT's?

MR. MARSHALL: At what point in time are we talking about?

MR. McKENNA: I am talking about this meeting in which he mentioned the REIT's.

MR. GIBERT: I want to instruct the witness once again to think of this particular meeting, not of other conversations or of other times.

THE WITNESS: Specifically, he indicated to me that one of these companies had high book value and very low ceiling prices on the Stock Exchange, even though many of them are depressed.

Q (By Mr. McKenna) Anything else?

A And he felt that there might be some opportunity there, but he didn't indicate the name of the company, or the exact opportunity, or he just said for various reasons it is --

don't believe that he has testified that

at this particular meeting any reference

was made to D-Z Investment Company.

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Excerpts from Deposition of Harold B. Levin
MR. McKENNA: Quite to the contrary.

He testified originally when I asked him, and you may recall I asked him when he first heard of either D-Z or the venture which ultimately became involved, and Mr. Marshall objected and requested I break the question down. And I asked him when he first heard of D-Z Investment Company. And he told me he heard of it in the first discussion, which he then related to Mr. Zimmerman. And all my questions have been related to that subject.

Now, if he at that time was only referring to what he knew ultimately came to be D-Z Investment Company, I will accept that.

THE WITNESS: That is certainly what I intended.

Q (By Mr. McKenna) That's why I asked my initial question the way I did, and I thought it was a better question. But Mr. Marshall suggested I break it up.

Is it true at that particular time of the first discussion you were not aware of the name of any particular company he was talking about?

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<i>*</i>	NO.	1	6.5. B	UCE	aware.

Q Do you now know that such a company was formed and it is D-Z Investment Company?

A Yes. I do.

Q And the second conversation, discussion, about which you testified, the one at which you were shown papers concerning R.E.I.T.'s, was that discussion also about the company that Mr. Zimmerman was contemplating would be formed or had been formed?

It was about this.

Q Has that -- do you know now that company to be D-Z Investment Company?

A Y do.

Q Now, I lost where my last question was.

(Thereupon, there was a brief recess.)

Q (By Mr. McKenna) I am talking about the discussion, the second discussion about which he has testified, namely, the one at which he was shown certain documents with respect to certain R.E.I.T.'s.

MR. GIBERT: And it is understood,

I gather, from our previous colloquoy and
questioning that when you say D-Z Investment Company, it is the company which
ultimately became D-Z?

MR. McKENNA: The company which

THE WITNESS: At that meeting? MR. McKENNA: Yes.

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A 1337 Excerpts from Deposition of Harold B. Levin

1	THE WITNESS: He said that he felt
2	there might be good investment opportunities
3	in such a company.
4	Q (By Mr. McKenna) Did he tell you at that
5	meeting why he was not at liberty to tell you the name
6	of the R.E.I.T. that he had in mind?
7	A He said certain regulations prevented him
8	from disclosing that type of thing.
9	Q I'm sorry, are you finished?
10	A Yes.

	Excerpts from Deposition of Harold B. Levin
1	Q Did he specify what regulations, whose
2	regulations?
3	A I think he mentioned well, let's see,
4	he mentioned these on the American Board and the
5	Exchange regulations prevent him disclosing the names
6	of any of those stocks that were placed.
7	Q Did he specify the reason why he
8	A He just said Federal
9	MR. GIBERT: Let him finish.
10	Q (By Mr. McKenna) What the regulation was
11	or what about the regulation that prohibited disclosure
12	of the REIT that he was interested in?
13	A No, I don't recall.
14	Q Now, do you recall whether or not it was
15	at that discussion that Mr. Zimmerman indicated to you
16	that if yes wanted to participate and supply money, it
17	might prove to be speculation, on the other hand,
18	you might only make some interest on the deal and
19	nothing more, in words or substance.
20	A Was it at that time?
21	Q Yes.
22	A I don't recall.
23	Q Was it at or prior to that time?
24	MR. MARSHALL: I think that is a
25	misleading question.

	A 1339
•	Excerpts from Deposition of Harold B. Levin
1	MR. McKENNA: Well, was it no, I 66
2	will stand by my question.
3	Q (By Mr. McKenna) Did he make that state-
4	ment in words or substance to you, either at that
5	meeting or at sometime prior to that meeting?
6	MR. MARSHALL: Then I am going to
7	now, I am sorry, you have clarified it
8	now. Other than at that meeting, which
9	the witness just responded to, and I believe
10	his answer was no, and then you said at
11	some prior meeting.
12	MR. McKENNA: Ro, I said prior meeting,
13	that statement was made either at or prior
14	to that meeting, as opposed to subsequent
15	to that meeting.
16	MR. MARSHALL: If it is prior to that
17	meeting, I am going to object on the
18	grounds it is repetitious.
19	MR. McKENNA: I think I will have to
20	establish in point of relativity when it
21	was.
22	THE WITNESS: I don't recall.
23	Q (By Mr. McKenna) You don't recall that it
24	was not subsequent?

I don't recall.

Excerpts from Deposition of Harold B. Levin

Q But you do recall him making some such 67 statement at one time or another.

MR. GIBERT: Excuse me. Would you give me again the statement we are talking about? I lost it in the colloquy. What was it?

MR. McKENNA: Well, I think the question is on the record, he can read it back.

MR. GIBERT: Well, if you would prefer that he read it back --

MR. McKENNA: Because if I peraphrase it, again, I am sure I will run into an objection that my paraphrase of my own paraphrase is inaccurate, so I would just as soon the reporter read it back, if you have any need for clarification.

MR. GIBERT: I am sorry, I do.

(The question was read by the reporter.)

Q (By Mr. McKenna) Have you now testified to all of the discussions that you can recall having taken place, specifically at that second meeting as I have called it, the meeting in which he showed you the papers with figures on REIT's?

A Yes.

Q The papers that he showed you with respect to the REIT's, were they printed papers or were they figures that had been written down on a -- in hand-writing?

A I think he had two sets of figures, I vaguely recall one was handwritten, like A, B, C, D, nothing identified the names. And then he may have had some other material that he showed me, but I don't recall what it contained. It was some printed material.

Q The A, B, C, D's that you have referred to, were they intended to signify different companies, different REIT's?

A Different REIT companies.

Q Did he give you at that meeting a copy of any of these figures, these papers with the figures on them?

A He did not.

Q Did he ever give you a copy of those papers?

A Of those papers?

Q Yes, sir.

A A, B, C, D?

Q Yes.

A No.

Q Do you recall when your next discussion

Excerpts from Deposition of Harold B. Levin
with Mr. Zimmerman was in relation to April 29th, 69
when you purchased the note?

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MR.

MR. MARSHALL: In regard to what?

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MR. McKENNA: In regard to this investment or D-Z Investment Company or the
company that was contemplated to be formed.

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THE WITNESS: You say the next dis-

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Q (By Mr. McKenna) Yes, before the 29th.

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MR. MARSHALL: Well, I believe there has

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been testimony, Mr. McKenna, as to certain conversations

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that I don't know that they have been gone into

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specifically, but there were casual comments and some

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discussions while the doctor was treating Mr. Zimmerman

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professionally.

Q (By Mr. McKenna) Well, do you recall?

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MR. MARSHALL: So I take it your

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question is meetings or discussions in

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addition to those already testified to.

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MR. McKENNA: Well, he hasn't testified to the specific discussions other than the

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fact that he has had casual conversations.

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Q (By Mr. McKenna) Do you recall any other

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specific meeting other than the two that you testified

25 about?

A 1343

Excerpts from Deposition of Harold B. Levin

A Not specific, all the others were casual conversations.

Excerpts from Deposition of Harold B. Levin

1	Q	And all the others were in the course of 71
2	A	Either social or professional in my office,
3	but not busi	ness discussions.
4	Q	You previously testified you had discussions
5	in the cours	e of your treatment of him. You are saying
6	now you also	had casual discussions in the course
7	Α	Socially.
8	Q	Socially? At any of those, on any of
9	those occasi	ons, did Mr. Zimmerman give you any documents
10	or papers?	φ.
11	A	Not to my knowledge.
12	Q	Did he show you any documents or papers?
13	* A	Not to my knowledge.
14	Q	Did there come a time when it was disclosed
15	to you which	R.E.I.T. Mr. Zimmerman was interested in?
16	A	It was
17	1	MR. GIBERT: The answer is yes or
18	no?	
19		THE WITNESS: Yes.
20	Q	(By Mr. McKenna) When was it disclosed to
21	you?	
22	, A	About the middle of May.
23	Q 4	And what R.E.I.T. was that?
24	A 1	N.J.B.
95	Q	And by whom was it disclosed to vor?

Excerpts from Deposition of Harold B. Levin

A This could have been the latter part of 72
May. As far as exact dates, I don't know whether it
was mid-May or latter part of May. I don't know the
exact date, but I know that it was two to three weeks
after I had because I was reluctant to, you know,
to invest and not even know what company. I knew I
was investing with D-Z Company.

MR. GIBERT: You knew -- all right.

Just try to respond to the question, and
we'll move faster.

THE WITNESS: All right. I'm sorry.

- Q (By Mr. McKenna) Is it your best recollection that --
 - A I know it was after the middle of May.
- Q At any rate, two or three weeks after you had already purchased the notes?
 - A Right.

- Q And how was it disclosed to you?
- A I phoned Mr. Zimmerman to tell him I'd like to know what this company is that is involved, and that's when he first told me.
- Q Was there any particular reason why you called him at that time?
- A Well, I called him because I was told that it would be several weeks before he could disclose it,

	A 1040
1	Excerpts from Deposition of Harold B. Levin
	you know, at the time I loaned the money. I simply 73
. 2	gave a note, you know, to D-Z Company.
3	Q And in that conversation did Mr. Zimmerman
4	disclose it was N.J.B.?
5	A In that conversation.
6	MR. MARSHALL: Which conversation
7	are you referring to?
8	THE WITNESS: This was a telephone
9	conversation several weeks into May. It
10	may have been the latter part of May. It
11	may have been the 20th of May.
12	MR. GIBERT: All right. You have
13	answered that question.
14	Q (By Mr. McKenna) Did you receive any
15	written indication or confirmation that the R.E.I.T.
13	in which D-Z Investment Company or Mr. Zimmerman, were
17	interested in was N.J.B. Prime?
18	MR. MARSHALL: At what point in
19	time?
2	MR. McKENNA: I'm talking about
21	after it was disclosed to him. It had to
22	have been since it was first disclosed

to him in this telephone conversation, it

had to have been either at that time or

thereafter.

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Excerpts from Deposition of Harold B. Levin

THE WITNESS: I don't recall.

Q (By Mr. McKenna) Do you recall receiving any documents -- well, I'd like to mark for identification copies of Schedule 13B as Exhibit 3A, a Schedule 13B with respect to N.J.B. Prime Investors, filed by D-Z Investment Company, and bearing a date on page six thereof of May 3, 19/4.

THE WITNESS: May I look at it?

MR. GIBERT: Yes, you'll get an

opportunity.

Q (By Mr. McKenna) As Exhibit 3B, an amendment number one to Schedule 13B, with respect to N.J.B. Prime Investors, filed by D-Z Investment Company, and bearing a date of May 21st, 1974 on page two thereof.

Exhibit 3C, an amendment number two to Schedule 13B with respect to N.J.B. Prime Investors, filed by D-Z Investment Company, and bearing a date of June 3rd, 1974 on page two thereof.

And as Exhibit 3D a copy of an smendment number one to Schedule 13B with respect to N.J.B. Prime Investors, filed by D-Z Investment Company, bearing a date on page four -- page two thereof, of July 8, 1974, and I ask Mr. Reporter that he mark these for identification.

Excerpts from Deposition of Harold B. Levin

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(Thereupon, the court reporters marked Exhibits 3A, 3B, 3C and 3D to the deposition of Dr. Levin for identification.)

Q (By Mr. McKenna) Dr. Levin, I place before you and your counsel documents that were marked 3A through 3D. My question to you, when you have had an opportunity to look at them, to ask if you have ever received copies of one or more of these documents.

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THE WITNESS: I don't recall ever
seeing those papers, but they could be among
the papers I have at home. I mentioned that
I have a sheaf of mimeographed things.
Q (By Mr. McKenna) Well, you have testified
that the first that it was ever disclosed to you that
NJB was the company that Mr. Zimmerman and/or D-Z was
interested in was when you had a tolephone convensation
with him two or three weeks after you purchased the
notes?
A Right.
Q And so am I correct in understanding that
if you had received any copies of any of these, it
would have been after that date?
MR. GIBERT: I don't think that that
follows from the testimony at all.
Q (By Mr. McKenna) Do you know?
A I don't know.
Q Am I correct in understanding you do not

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I may have some documents there before I may have them after the date, but I don't that date. recall.

Well, if you had received Exhibit 3A or a copy of Exhibit 3A at or shortly after the date that it is dated, May 3rd, 1974, would you have read the document when you received it?

> A If I would have received what?

Q This document, would you have read it when you received it?

If I had received it prior to what?

April the -- or about May 3rd, or shortly thereafter.

> MR. MARSHALL: I would object to the form of the question. Why don't you ask him if he recalls receiving it, and then if he recalls having read it.

Q (By Mr. McKenna) Do you recall -- no, I will stand on my present question.

I don't recall receiving this.

Q If you had received this and read it, would you have known by what is contained on that document that NJB was the company, NJB Frime Investors?

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A I frequently received mail, put it away and don't even open it for a long time.

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MR. GIBERT: Well, that's not relevant to the question. However, 't bears the date of May the 3rd. His question is, I take it,

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Excerpts from Deposition of Harold B. Levin 1 would you have understood this document. 86 2 and what it purports to say? 3 THE WITNESS: I think if I read that 4 carefully I would understand. What is that 5 exhibit? 6 MR. McKENNA: 3A. 7 MR. GIBERT: 3A. 8 THE WITNESS: 3A. 9 Q (By Mr. McKenna) And you would have 10 understood that N.J.B. Prime was one, at least, of the R.E.I.T.'s that D-Z Investment Company was interested 11 12 in? MR. MARSHALL: I object to that 13 14 question. (By Mr. McKenna) And was making an invest-15 ment in? 16 I did not. 17 No, you would have if you had read this 18 document? 19 MR. MARSHALL: I object to you 20 putting words in the witness' mouth. You 21 keep changing the question. We went from 22 would you know it is N.J.B. to would you 23

know it was Davis and Zimmerman's company,

to would you know there was other R.E.I.T.'s

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MR. McKENNA: Go ahead. I still have my --

MR. MARSHALL: I want to object to the form of the question. If you want to rephrase it, go shead.

MR. McKENNA: No, I want an answer to my question.

THE WITNESS: I have to state this:
The first time I ever knew --

MR. GIBERT: No, sir, that's not responsive to the question. The question, if I may paraphrase it, is if you received that document, and if you read it somewhere near to May the 3rd, would you at that time have understood N.J.B. Prime fors was a company in which D-Z was interested.

THE WITNESS: I would have from reading that paper.

Q (By Mr. McKenna) Is it your best recollection that the first that you learned that N.J.B. was the company that D-Z was interested in was when Mr. Zimuerman -- when you had the telephone conversation with Mr. Zimuerman, which you have previously testified to, two or three weeks after you purchased the note, and which

	Excerpts from Deposition of Harold B. Levin
1	you asked him to identify the company?
2	A That's correct.
3	Q Based upon your discussion with Mr.
4	Zimmerman, what I have characterized the second meeting
5	the meeting at which he showed you some figures with
6	respect to a number of R.E.I.T.'s labeled A, B, C, D,
7	was it your understanding that Mr. Zimmerman had alread;
8	determined one particular R.E.I.T. that D-Z was going
9	to make its investment in, as of that day?
10	MR. MARSHALL: What do you mean,
11	was it his understanding? Was he told
12	that?
13	MR. McKENNA: Was it his understanding
14	based on the conversation that that was the
15	fact.
16	MR. MARSHALL: That assumes it was the
17	fact.
18	THE WITNESS: I can't
19	MR. McKENNA: It doesn't assume it
20	was the fact.
21	THE WITNESS: I can't assume that
22	fact that what you so-called as a
23	target picked this. He showed me A, B,
24	C, D, and he didn't identify any of them

to me. Then he showed me printed material

2.8
that just said about R.E.I.T.'s in general.
Q (By Mr. McKenna) Did he indicate that there
was one particular R.E.I.T. though, not identified by
name, but in the group A, B, C, D that he was parti-
cularly interested in?
A He said that
MR. GIRERT: The answer is yes or
no. Did he indicate that there was one
particular one of those that he was
interested in?
THE WITNESS: He indicated that.
Q (By Mr. McKenna) Do you know now that
if that particular one was N.J.B. Prime?
MR. MARSHALL: I object to this.
How could he possibly
MR. McKENNA: The one he was
referring to at that time, does he know
now? We can find out how he could possibly
know if he says yes. If he doesn't, we
don't have to explore the area.
THE WITNESS: I don't really know

that that was the one.

Excerpts from Deposition of Harold B. Levin

91 * * *

11	Q (By Mr. McKenna) At or prior to the time
12	that you actually acquired the note on April 29th, 1974
13	had you been told anything about the number of shares
14	in a R.E.I.T. that had already been purchased by D-Z
15	Investment Company?
16	A No.
17	Q Had you been told that D-Z Investment
18	Company had, in fact, already purchased some shares in
19	a R.E.I.T.?
20	A You are speaking at the time of April the
21	29th?
22	Q Prior to April 29th.
23	A No.
24	Q Was it your understanding based upon what
25	you had been told that they had already, as of April

.A 1357

Excerpts from Deposition of Harold B. Levin 92 1 29th, purchased shares in a R.E.I.T.? 2 MR. GIBERT: Was it his understanding 3 when? 4 MR. McKENNA: As of April 29th. 5 April 29th. 6 MR. GIBERT: Okay. 7 THE WITNESS: No. 8 (By Mr. McKenna) Was it your understanding Q that they had not yet purchased any shares as of April 9 10 29th? I had no understanding of that. I didn't --11 MR. GIBERT: All right. You 12 answered it. 13 (By Mr. McKenna) Were you told at or prior Q 14 to April 29th when you acquired the six percent 15 promissory note of D-Z anything about the number or 16 percent of shares of the k.E.I.T. that it was anticipated 17 D-Z would acquire with the proceeds of the note? 18 You say at the --A 19 At or prior to that date. Q 20 Not to my knowledge. 21 Do you recall ever being told the number Q 22 or percent of the shares of the R.E.I.T. that it was 23

I have just read in this statement here.

anticipated D-Z would purchase?

25

Q	Other	than	what	yeu	have	just	read	i.n	thic
statement	have you	beer	tole	i an	ythia	g?			

A Yes, I have been told that --

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MR. GISERT: Excuse me. The testimony also has been, I believe, that he does not recall whether he had received, and he does not recall whether he had read the statement which, I take it, you are referring to Exhibit 3A or 3B or 3C or 3D.

MR. McKENNA: I said other than -- he has just read --

MR. GIBERT: What he has just read?

MR. McKENNA: That's right.

THE WITNESS: I don't recall that they purchased a definite amount of shares or a percentage of shares.

MR. McKENNA: Do you recall being told that they intended to purchase a specific amount or approximate amount or specific percentage or approximate percentage of the shares of a specific R.E.I.T.?

MR. GIBERT: Excuse me, Mr. McKenna.

By told, do you mean orally?

MR. McKENNA: Told orally or in writing, informed.

Excerpts from Deposition of Harold B. Levin

1	MR. GIBERT: He has already testified 9
2	that he may or may not have received, and
3	he may or may not have reed
4	MR. McKENNA: I am asking if he recalls
5	independently having been so informed. I am
6	asking independently.
7	THE WITNESS: The enswer is no.
8	MR. MARSHALL: Excuse me. Your question
9	was, does he recall? And his answer was no?
10	MR. McKENNA: Yes.
11	THE WITNESS: Do I recall it?
12	Q (By Mr. McKenna) Do you recall it at or
13	prior
14	A Wait a minute, I do recall go shead.
1 5	Q Do you want to amend or change your answer?
16	A No, no.
17	Q Do you recall that at or prior to April 29th
18	well, withdraw that question.
19	Do you recall having been informed since
20	April 29th about the number or percentage of shares of
21	the R.E.I.T. that D-Z intended to acquire other than
22	what you have just learned from reading these documents
23	today right now, Exhibit 3A through 3D?
-	. 그는 사람들이 되었다. 그는 사람들이 되었다면 하는데 되어 있는데 되어 있는데 이 사람들이 되었다면 하는데 사람들이 되었다면 하는데 사람들이 되었다면 하는데

Repeat that question.

MR. McKENNA: Read it back, please.

Excerpts from Deposition of Harold B. Levin

	and the second s	_
1	THE WITNESS: Read it back to me.	
2	(Thereupon, the court reporter	
3	read the referred to question.)	
4		

	A 1361
	Excerpts from Deposition of Harold B. Levin
1	A I recalled being told that during the
. 2	latter part of May stock was being purchased into
3	NJB, but the percent or quantity of shares I don't
4	know, I don't recall.
5	Q You don't recall being told?
6	A I recall being told that it was being
7	purchased.
8	Q But not the quantity?
9	A Not the quantities or percentages.
10	Q But were you told, do you recall being
11	told that
12	A That the
13	Q not only the quantities or percentages
14	that were being purchased, but it was intended ultimately
15	to be obtained.
16	MR. MARSHALL: To obtain what?
17	Q (By Mr. McKenna) Percentage of the shares.
18	A I was not told.
19	Q Were you told anything at or prior to
20	April 29th concerning when you withdraw the question.

time you purchased the note on April 29th, anything concerning what would be done with the shares of the REIT, ones that were obtained.

MR. MARSHALL: Once again -- go ahead,

Were you told anything at or prior to the

Excerpts from Deposition of Harold B. Levin

1	Mr.	Gibert
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2.

 MR. GIBERT: Your question "told,"
you keep using the word "told."

Q (By Mr. McKenna) Okay. Were you told or informed in any manner?

A I vaguely recollect that it was indicated to me when I was shown this list of A, B, C, D, that the depressed selling stock of one of the particular REIT's, whether it was A, B, C or D, which I don't know, apparently has had back management and it was felt that this corporation had been formed might be able to supply management that would improve, an improved management, that this stock should be selling in other words, should be better managed, apparently, that was one of the factors in why it was selling so little.

Q Were you told that it was the intention of

A I didn't know which stock it was.

MR. GIBERT: Excuse me, go ahead.

Q (By Mr. McKenna) Yeah, at that time you did not know what stock it was?

A No.

Q Were you told anything, were you told that it was the intention of Mr. Davis and Mr. Zimmerman to have D-Z take over control of the REIT whose stock

THE WITNESS: I wasn't informed about being merger, but I believe that it was indicated that some expertise and manage-ment --

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Q (By Mr. McKenna) But there were no indications --

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A The D-Z Company had to offer.

Q But there were no indications --

	A 1304
	Excerpts from Deposition of Harold B. Levin
1	A This particular REIT, but there was no
2	indication of takeover.
3	Q And there was no indication of any plans
4	or potential plans to merge the REIT into D-Z?
5	A I don't understand what you mean, merge
6	that into D-Z. I understood that D-Z was to lend
7	their expertise management, if they had sufficient,
8	owned sufficient shares, that I understand you elect
9	stockholders directors and all.
10	Q But you were not told, were you told anything
11	about any plans with respect to a possible merger of
12	the REIT into any company?
13	MR. MARSHALL: Mr. McKenna, I just
14	want to note for the record that the witness
15	just stated that he does not understand
16	what you mean by the term "merge."
17	Q (By Mr. McKenna) Do you understand the
18	term "merger" as it relates to corporations?
19	A Not everything about it. There are so
20	many types of mergers, I mean I have heard of little

A Not everything about it. There are so many types of mergers, I mean I have heard of little firms being swallowed by big ones, a little one swallowing a big one, one has a loss, one has a gain. I have to see something in black and white and get explanations.

Q Were you told in one form or another that

 $\angle 3$

Excerpts from Deposition of Harold B. Levin
it was planned that the REIT might be in some way 100
consolidated with or absorbed into D-Z or any other
company?

A I was not told that specifically.

Q Were you told anything about the possibility
of a merger or consolidation or absorption of the
REIT into Security Management Company?

A Not that effect, but my understanding was that Security Management of D-Z Company -- let me say, my understanding is that D-Z Company had management efficiency that apparently was felt to be lacking in one of the particular REITS. But, I didn't learn that the particular REIT was NJB until the latter part of May.

Q Were you told, again, at or before April 29th when you purchased the notes, anything about any plans for any possible disposition of the assets of the REIT that was to be -- whose stock was to be acquired?

A I was not told.

Q Was anything told you or were you informed in any manner, at or prior to April 29th, about the possibility of Security becoming the investment advisor to the REIT that would be -- whose stock would be acquired?

1366 Excerpts from Deposition of Harold B. Levin 101 1 MR. MARSHALL: Security what? 2 MR. McKENNA: Security Management 3 Co., Inc. 4 THE WITNESS: Not in those words. 5 (By Mr. McKenna) Were you told at or Q 6 prior to April 29th, 1974, the time you purchased the 7 notes, the note, anything about the operation of REIT's 8 in general? 9 I was told that REIT's do not exist as 10 ordinary corporations, and I was aware of that, inasmuch 11 is I subscribe to the Wall Street Journal and have followed the REIT's. Well, let me just answer the 12 13 question, though. You asked was I told what? 14 Were you told or informed prior to April 15 29th, 1974, at or prior to a April 29th, 1974, when 16 you purchased the note, anything about the operation of REIT's and how they operated, in general? 17 Well, it was told to me that REIT's 18 different than corporations, in that REIT's are not 19 taxed like corporations. 20 Anything else? Q 21 Along that lines. A 22

I am sorry. Anything else at all about

Yes, that they take mortgages and lending

how REIT's operate, what their business is?

25

23

24

Q

	Excerpts from Deposition of Harold B. Levin
1	business and
2	Q Anything about the types of mortgages they
3	take?
4	A They take a beating pardon?
5	Q Anything about the types of mortgages they
6	take?
7	A Not specifically in real estate, I assume
8	that it is in realty and construction.
9	Q You were told do you recall that you
10	were told something about their receiving a different
11	tax treatment than a corporation, is that correct?
12	A Well, I don't recall specifically, that
13	REIT's are operated under certain regulations and under
14	certain governmental controls that are treated
15	differently than ordinary corporations.
16	Q Who told you this?
17	A Mr. Zimmerman.
18	Q Do you recall when he told you?
19	A When he was showing me A, B, C, D.
20	Q And were you told or informed at any time
21	prior to April, at or prior to April 29th, when you
22	purchased the note, that the different tax treatments
23	that was accorded to REIT's might be lost if 50 percen

or more of the stock of the REIT were to become

concentrated in the hands of five or less persons?

	Excerpts from Deposition of Harold B. Levin
1	A Wasn't specifically told that. 103
2	Q Were you ever told that?
3	A Never.
4	Q Were you ever told anything of that nature.
5	A Not to my knowledge.
6	Q Were you told at or before April 29th or
7	informed in any manner at or before April 29th as to
8	what was D-Z's capitalization as of that date?
9	A Was I told what their capitalization
10	MR. GIBERT: As of what date?
11	MR. McKENNA: As of April 29th.
12	MR. GIBERT: Well, your question is
13	what? Was he told before?
14	Q (By Mr. McKenna) At or before the time?
15	MR. GIBERT: At or before April 29th?
16	I want you to focus on the "before", about
17	what D-Z's capitalization was on April 29th.
18	Q (By Mr. McKenna) What it was up to
19	April 29th.
20	A You are talking about
21	Q Oh, I withdraw the question.
22	Were you ever told anything at or before
23	April 29th concerning the capitalization of D-Z, and
24	. by that I mean the amount of money put in of an equity
25	nature, as opposed to notes or loans?

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	Excerpts from Deposition of Harold B. Levin
1	A I was told that it would require D-Z 104
2	Company, in order to be formed and, too, the projection
3 🖛	of Mr. Zimmerman indicated to me that it would require
4	a total investment of about a million dollars, and
5	for that is to capitalize or to finance the D-Z
6	Company. And I was told that I was contributing or
7	loaning money. I was simply making a loan to the
8	Q Nere you told I am sorry.
9	A to the company, to D-Z Company. How,
10	whether it was formed
11	MR. GIBERT: Excuse me.

THE WITHESS: At least that I was

being asked for a loan, if I was --

MR. GIBERT: Dr. Levin, please, please.

THE WITHESS: Thank you.

MR. GIBERT: You have digressed from what the question was.

THE WITNESS: I am sorry.

Q (By Mr. McKenna) Let me go back. I will put another question. Were you told at or prior to the time you purchased the notes on April 29th, the amount at any time that had been contributed to D-Z in the form of money paid for common stock of D-Z?

A No.

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Q Do you know now how much money was contri-

Excerpts from Deposition of Harold B. Levin
buted to D-Z at or before April 29th in the form of
money contributed for the purchase of common stock of
D-Z?
A I don't really know.
Q Do you know who owns the stock of D-Z?
A I have seen the list of people that
I know the names of the officers and I know the people
who've lent money at interest there.
Q No, I am talking about the stock as opposed
to the people who took the notes. Do you recall now
being told at any time prior to April 29th, at the
time you purchased the note, who the stockholders were
of D-Z?
MR. GIBERT: He has changed the
question, but the question now he can
answer.
THE WITNESS: Did I know at April
29th who the stockholders were?
MR. GIBERT: No, sir, that was not
the question.
Q (By Mr. McKenna) No, were you told or
informed at or prior to that date?
A Who the stockholders were?
Q Yes.

I was told that D-Z Company was 50 percent

Excerpts from Deposition of Harold B. Levin

- 1	
2	owned by Mr. Zimmerman and 50 percent by Davis. I,
	at least, assumed that it was 50 percent, and that
3	Hr. Davis really represented his 50 percent was put
	up by Security Management, of which are the Beckers
5	brothers and himself was my understanding.

Q But were you told or informed in any manner, prior to April -- at or prior to April 29th when you purchased the notes, the amount of money they had paid for the stock of D-Z?

A I was not told.

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* * *

deposition was resumed.)

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MR. McKENNA: You want to start?

MR. GIBERT: Yes, and you may want to start out with whatever sort of question that our not producing has cleared up for the record.

MR. McKENNA: Well, what I want to state at this time is that I have been handed two documents by the witness, with his counsel's consent, which I would like to mark for identification at this time. The first is entitled D-Z Investment Company, 6 percent promissory note due March 31, 1975. It has a written in amount of \$50,000, and is dated 29 April, 1974, and indicates in the text that it is being issued to Harold B. Levin.

MR. GIBERT: Well, just a minute.

Mr. McKenna, as you see, that is the

original note and we obviously do not want

to turn that over to the court reporter

or anybody else. So may we agree that

either now or as soon as David comes back,

or at some recess we will make a copy of

Δ 1373

Excerpts from Deposition of Harold B. Levin that, give you the copy for attachment to the deposition.

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MR. McKENNA: If all counsel will agree that the copy will be considered as authentic or deemed authentic, I see no problem. Everything here seems to be copyable, so I have no -- I would like to have it deemed marked as Exhibit 4 for identification, and we will have a copy actually marked and we can obtain it.

MR. GIBERT: Fine.

MR. McKENNA: There also has been produced to me a second document, which I would like to mark as Exhibit 5 for identification, dated April 24, 1974, entitled D-Z Investment Company, private placement memorandum for issuance of up \$1,250,000 of 6 percent promissory notes due March 31, 1975. I would also note that attached to that document or as a part thereof is contained an Exhibit 1 to private placement memorandum, consisting of two pages. And Exhibit 2, which appears to be a form of a note. And Exhibit 3,

Excerpts from Deposition of Harold B. Levin

1	entitled certificate and purchase order,
2	which is addressed to D-Z Investment
3	Company, 420 Fourteenth Street, N. W.,
4	Atlanta, Georgia, 30318, dated blank,
5	1974.
6	MR. GIBERT: All right, sir. Now,
7	
8	Mr. Ross has walked in and we can ask him
	to make the copy, if that is agreeable with
9	you. Will you make a copy of that, please?
10	Make a couple of copies or call the secretary
11	and have the secretary make it, you know.
12	MR. McKENNA: Can we have this one
13	marked while we are waiting for the other
14	one?
15	
16	(A document was marked for id- entification as Exhibit 5.)
17	

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Excerpts from Deposition of Harold B. Levin

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MR. McKENNA: Let me osk a couple of questions and hopefully we can agree on that.

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Dr. Levin, the two documents you just produced, Exhibits 4 and 5, are those the only two documents in your possession, custody or control that you know of relating to your purchase of notes -- of a note of D-Z Investment Company?

MR. GIBERT: Excuse me, sir. I would object to the form of that question. I believe that if we are going to be talking about production of documents, you shouldn't use "relating to." You should refer him to the subpoens.

MR. McKENNA: I would like -- I will stand on my question and ask that I have an answer and then I will pose your question.

MR. GIBERT: Where is the subpoena, Dr. Levin? Do you have it?

MR. McKENNA: May I have my question -- are you going to direct him not to answer?

MR. GIBERT: I don't know whether I am going to or not. I am only concerned -no, I have no objection to that. He may answer that.

Excerpts from Deposition of Harold B. Levin

	sacciped from sepostation of narota s. Beoth	
1	THE WITNESS: The question was, 121	
2	were those the only documents? Yes, those	
3	are the only documents, yes.	
4	Q (By Mr. McKenna) Those are the only document	9
5	you ever received pertaining to D-Z?	
6	A No, I indicated previously that I have	
7	received communications and that I threw, or have	
8	misplaced, or they have been placed I only save what	
9	I consider pertinent.	
. 10	Q Can you recall the nature of the communica-	
11	tions that you received and d not retain?	
12	A Cannot.	
13	Q Do you recall whether they are anything	
14	other than letters?	
15	A They were probably of the nature to which	
16	I had no real	
17	MR. GIBERT: Dr. Levin, don't	
18	speculate. Testify. I don't want you	
19	to	
20	THE WITNESS: I do not recall.	
21	MR. GIBERT: not testify if you	,
22	do recall, but by the same token, do not	
23	just guess about what it might be.	
24	Q (By Mr. McKenna) Dr. Levin, did you receive	

any other documents other than the note which is

1 Ext
2 and
3 and
4 est

Excerpts from Deposition of Harold B. Levin
Exhibit 4, the private placement memo, and the exhibits
annexed thereto, which is Exhibit 5, to your knowledge
and your best recollection now or at or prior to the
time that you acquired the note on April 29th, 1974?

A I don't recall.

Q You don't recall receiving any other documents?

A Don't recall.

Q I ask you, showing you the notice of deposition in which your deposition and others was noticed, dated July 5th, 1974, and issued by my firm, I would ask you if, to the best of your knowledge at this time, have you produced all of the documents in your possession, custody or control which fall within the purview of that notice?

A Yes, sir.

Q Thank you. May I suggest that we mark this notice? I'm going to mark the notice as an exhibit.

MR. GIBERT: I have no objection.

MR. McKENNA: I would like to have marked as Exhibit 6 for identification on this deposition the notice of deposition which I have just described.

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(Theret	ipon, the	•	court	reporter	
marked	Exhibit	6	ior i	dentifica	tiba.)

Q (By Mr. McKenna) One further question:

Is it your best recollection that you did not, in fact,
receive any other document other than Exhibits 4 and 5
pertaining to D-Z at or prior to the time you acquired
the note on April 29th, 1974?

MR. MARSHALL: I am going to object on the ground it is repetitious. You asked him the identical question maybe two questions back.

MR. McKENNA: No, I asked him if he recalled, and he said no. I am asking him now if it is his best recollection that he did not. I think they are different questions and I'm entitled to an answer, particularly on a deposition to probe on it.

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	Excerpts from Deposition of Harold B. Levin
1	MR. GIBERT: And you are now 12
2	your time frame is still at or before the
3	execution of the note on the 29th of April?
4	MR. McKENNA: Or his receipt of the
5	note, yes.
6	MR. GIBERT: The receipt of the note
7	on the 29th of April?
8	MR. McKENNA: Yes.
9	THE WITNESS: Do I what is the
10	question again?
11	Q (By Mr. McKenna) Is it your best
12	recollection that you did not, in fact, receive other
13	documents prior to or at April 29th?
14	A Well
15	Q You have indicated that you do not recall
16	receiving other documents. What I am asking you is
17	it your best recollection that you, in fact, did not?
18	MR. GIBERT: I believe his testimony
19	is to the contrary, as a matter of fact,
20	that he thinks that he probably did receive
21	other documents, which he has thrown away.
22	MR. McKEHNA: No, he had received other
23	documents at some time.

MR. GIBERT: Unless I have got the time

24

25

wrong.

A 1380 Excerpts from Deposition of Harold B. Levin 125 1 MR. McKENNA: Yes, I have stated the 2 time frame and that is what I am trying to 3 be sure of. 4 THE WITNESS: I don't know, I don't 5 know. 6 (By Mr. McKenna) You have no recollection 7 one way or the other? 8 (Witness shakes head negatively.) 9 MR. MARSHALL: Excuse me. Mr. Reporter, 10 did you get the nod? THE WITNESS: I don't know. I guess, 11 12 I don't recall, was that the answer? Yes, 13 I don't recollect. 14 MR. GIBERT: Fine. 15 THE WITNESS: That is my original 16 note. 17 MR. McKENNA: Well, all right. Referring to ---18 MR. GIBERT: Why don't you put that in 19 your brief case? 20 THE WITNESS: I don't own a brief 21 22 case. MR. GIBERT: Don't own a brief case. 23

(By Mr. McKenna) Referring you to the

note which is Exhibit 4 for identification, can you tell

Q

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	Excerpts from Deposition of Harold B. Levin
	me when is the first time that you sad that note as 126
	it is actually filled in?
	A The 29th of April, 1974.
	Q Is that when Mr. Zimmerman brought the note
	to you?
-	A Yes, sir.
	Q And referring you to Exhibit 5 for
	identification, which is the private placement memo
	dated April 24th, 1974, can you tell me when is the
	first time you saw that document?
	A I don't recall the exact time that I saw
	this document, since I have received several and some
	I have discarded. This one I kept.
	MR. GIBERT: You have enswered the
	question. You don't recall.
	Q (By Mr. McKenne) Do you recall whether
	or not you received that document, Exhibit 4, the
	placement memorandum at or before April 29th?
	MR. MARSHALL: Excuse me. For the
	record, Exhibit 4 is the note.
	MR. McKENNA: I am sorry, Exhibit 5.
	Please amend my question, Mr. Reporter.
	MR. MARSHALL: I am sorry, what was
	the question? I missed it when I

(By Mr. McKenna) The question is whether

Excerpts from Deposition of Harold B. Levin

	Excerpts from Deposition of Harola B. Levin	
1	he recalls having received it at or before April 29th.	127
. 2	MR. GIBERT: The private placement	
3	memorandum.	
4	Q (By Mr. McKenna) The private placement	
5	memorandum, which is Exhibit 5.	
6	A I don't recall the exact date that I first	
7	saw the private placement memorandum. This particular	
8	copy, I saw this particular copy is a copy that I	
9	obtained last night,	
10	Q And where did you obtain the copy from?	
11	A From my attorney.	
12	Q And who is that?	
13	A Mr. Hugh Gibert.	
14	MR. GIBERT: Gibert, me.	
15	THE WITNESS: Gibert, that is this	
16	particular copy, but I have seen the copy	
17	previously.	
18	Q (By Mr. McKenna) And when previously was	
19	the first time you had seen a copy of that memo,	
20	private placement memorandum which is Exhibit 5?	
21	A I don't recall.	
2 2	Q Can you fix it in terms of your acquiring	
23	the note on April 29th, whether it was before or at	
24	that time?	

I can't recall.

Excerpts from Deposition of Hirold B. Levin

	Excerpts from Deposition of Airota B. Levin
1	Q Do you recall ever having received any 128
2	other versions of a private placement memorandum with
3	respect to the 6 percent promissory note that you were
4 .	purchasing?
5	A No other memorandums, do you mean specifically
6	on
7	Q With respect to the same subject matter,
8	yes, any other versions or amendments or drafts?
9	A Not with certainty.
10	Q Do you recall having been informed at any
11	time that an amendment had been made to the private
12	placement memorandum, which is Emhibit 5?
13	MR. GIBERT: Wait just a minute.
14	If that assumes
15	MR. McKENNA: I do not mean to
16	assume that such amendment was made. I
17	do not know, in fact, whether it was.
18	MR. GIBERT: If an amendment was ever
19	made, understand, that is.
20	MR. McKENNA: No, I am asking him if
21	he was ever informed that one was made,
22	not
23	MR. GIEERT: And that does not

suggest that one, in fact, has been made.

THE WITNESS: Well, naturally, in

Δ 1384

reading this I saw the amendment, that there is an amendment there.

Q (By Mr. McKenna) There is an amendment here to what you had seen previously.

A No, I am saying that in looking that over,

I didn't -- I don't --

MR. GIBERT: Excuse me.

THE WITNESS: Go ahead, though.

MR. GIBERT: There is a possibility that the witness is confused with some other amendments that were shown him this morning.

MR. MARSHALL: Thirteen D's.

MR. McKENNA: No.

MR. GIBERT: I merely say that it is possible that the witness is confused, that the record may become confused.

MR. McKENNA: No, you understand, my question is with respect to seeing any other drafts or versions or amendments of the private placement memorandum relates to this document, and solely to this document or version of this document, and not to the Schedule 13 D's which were marked this morning. Do you understand that?

MR. GIBERT: The record can show, if

Excerpts from Deposition of Harold B. Levin

1	you wish, that I'm showing to the witness,
2	to refresh his recollection, Exhibits 3A
3	and 3B and 3C and 3D, which I ask him to
4	compare just very briefly with Exhibit 5
5	so as to know he is not talking about the
6	same document.
7	Q (By Mr. McKenna) Okay. Now, having had
8	those documents in front you, when you refer to having
9	seen an amendment, were you referring to the Schedule
10	13 D or to the private placement memorandum?
11	A I don't know.
1	

Excerpts from Deposition of Harold B. Levin

	n section from Deposition of National B. Betth	
1	Q Did you understand this document, which is	131
2	Exhibit 5, was an amendment of a prior version?	
3	A _ don't recall.	
4	Q Do you know of anything in that document	
5	which indicates that it is an amendment to a prior	
6	version?	1
7	A I know that it says there is an amendment	
8	there.	
9	Q Would you tell me where in here it says	
10	there is an amendment?	
11	A Somewhere. Is this the placement? Is	
12	there something that says I don't know if I was	
13	talking about this. Something I thought said amendment	
14	here. We just looked at something a noment ago.	
15	. No, I was looking at "Exhibit." I confused	
16	"Exhibit" with "amendment." I don't see any amendment	
17	here.	
18	Q May the record note that the exhibit he is	
19	referring to is the top of document Exhibit 1, page two	
, 20	to the placement private placement memorandum.	
21	MR. GIBERT: Since the words	
22	"private placement memorandum" appear in	
23	both places, apparently that is the source	

THE WITNESS: I saw something typed

of the confusion.

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Excerpts from Deposition of Harold B. Levin here. I thought that was amendment.

Q (By Mr. McKenna) All right. Now, is it

your testimony then that you don't recall ever having

been informed that an amendment had been made to this

private placement memorandum which is Exhibit 5?

A I don't recall.

Q Have you ever been informed that an amendment to the private placement memorandum was planned?

A I don't recall.

Q When you say you don't recall, you don't recall being informed or den't recall one way or the other?

A I don't recall that an amendment was made, or at least to my knowledge. I could have been informed of any amendment or that may relate to any part of this, but to my knowledge, I don't recall.

Q You don't recall having been so informed?

A No.

Planned that certain changes would be made to the terms that are contained or to any of the terms that are contained in the private placement memorandum, which is Exhibit 5?

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Excerpts from Deposition of Harold B. Levin

134 * * *

MR. McKENNA: Yes, I will explain it
to you. What I mean by the difference between
change and amendment. Amendment, I meant a
document or physical amendment by a piece of
paper. By a change I meant a change which
would be a change, let's say, in the understanding that is incorporated within the
document with or without having to be
incorporated in any piece of paper. And
by a change I mean a change regardless of
a physical amendment being made.

MR. GIBERT: Do you understand what he is saying, Doctor?

THE WITNESS: I think I do, but I know of no such changes. I don't know whether I understand the question or not. I am seeing

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	Excerpts from Deposition of Harold B. Levin
1	things, amendments or exhibits, and that
2	is confusing to me.
3	Q (By Mr. McKenna) Did you read the copy of
4	the Exhibit 5, or a copy of the private placement
5	memorandum, which is Exhibit 5, that you received?
6	A I glanced at it. I didn't see anything
7	that's pertinent to me about
8	Q My question you cut we off. My question
9	is, did you review it when you received it, when you
10	first received it, whatever version I withdraw the
11	question.
12	Whenever you first received whatever copy
13	you did receive of the private placement memorandum,
14	which is now Exhibit 5 for identification, did you
15	review that document?
16	A No, I didn't.
17	Q Do you know how you received it?
18	A I don't recall.
19	Q Do you recall whether or not you discussed
20	it with Mr. Zimmerman?
21	A I don't recall.
22	Q You have no recollection of having discussed
23	it with Mr. Zimmerman?
24	A No recollection.

Q Do you have any recollection of having

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Q

Excerpts from Deposition of Harold B. Levin discussed this memorandum with enybody class at or 136 about the time you first received it? I do not. Do you have any recollection of having Q discussed the contents of this memorandum with anyone other than the attorneys who are representing you here today, and other than in connection with your appearance on this deposition? Do not. At or prior to the time that you acquired Q the note of D-Z, were you given any financial information about D-2 in writing? No, sir, not to my knowledge. I don't recall. You don't recall having been given any? Q I don't recall it. A Do you recall ever having seen a balance Q sheet of D-Z? A Don't recall. Do you ever recall having been given any Q financial reports or statements of D-Z's financial condition? A Don't recall.

You don't recall having been given any?

I don't recall it.

	Excerpts from Deposition of Harold B. Levin
1	Q Have you ever been given access to D-2's
-2	books and records of account?
3	MR. MARSHALL: I object to the
4	form of the question. What constitutes
5	access?
6	MR. McKENNA: Well, I'll stand on
7	my question no, withdraw the question
8	and rephrase it to obviste your objection
9	if I can.
10	Have you ever been told have you
11	ever been informed by any manner, shape or
12	form that D-Z's books and records of account
13	were available for you to inspect?
14	THE WITNESS: I don't recall.
15	Q (By Mr. McKenna) You don't recall having
16	been informed?
17	A Don't recall it.
18	Q Have you ever been told anything about the
19	salaries that would be received by D-Z's officers?
20	MR. GIBERT: At what time?
21	MR. McKENNA: At any time.
22	THE WITHESS: I don't recall it.
23	Q (By Mr. McKenna) You don't recall being
0.4	told anything?

Correct.

Excerpts from Deposition of Harold B. Levin

Q	After your first discussion with Mr.	138
Zimmerman	in which he mentioned to you the possible	
formation	of a company, and up to and including the	
time you a	acquired the note, were you ever given any	
written re	eports or statements of the financial condit	ion
of Securit	ty Management Company, Inc.?	

A Not to my knowledge.

Q Have you ever been given any -- withdraw the question.

At any time since your first meeting with Mr. Zimmerman, or your first discussion with Mr. Zimmerman oncerning the formation of the company that you testified to, have you ever -- and at any time since then, have you ever been given any copies of any annual reports, prospectuses, financial statements, or other reports of the financial condition of N.J.B. Prime Investors?

A No, sir.

Q What if anything have you been told -- withdraw the question.

What if anything prior to and at the time you received the note on April 29th, 1974, were you told or informed about how it was contemplated the notes or the note that you were receiving would be repaid?

MR. MARSHALL: Let me not object
to the question, but seek clarification
from you. When you say "told" are you
including what is contained in that place-
ment private placement memorandum,
Exhibit 5?

MR. McKENNA: I am asking what the witness can tell independently, right now, what he can tell me in his present knowledge he was told or informed without reference to the private placement memorandum which, I believe he indicated he did not review. But whether or not he did, I would like to know what his present knowledge is.

THE WITNESS: Certainly, I understand that I made a loan to the corporation that has no collateral, but that will draw interest and that it is a speculative investment.

Excerpts from Deposition of Harold B. Levin

	"
1	Q And were you told well, who told you 140
2	this?
3	A Mr. Zimmerman.
4	Q And what did you understand that he meant
5	by the term "speculative investment"?
6	A That I might, by making that loan, that I
7	might be able to purchase any assets that D-Z Corporation
8	made as a result of my loan, that I might be able to
9	get in on the ground floor of any
10	Q Did Mr I am sorry.
11	A of any assets that might therefore
12	arise.
13	Q Did Mr. Zimmerman, in words or in sub-
14	stance, advise you that it was contemplated that D-Z
15	would at some point issue common stock that might be
16	made available to you?
17	A I think there was an indication, but I
18	don't remember him specifically saying that.
19	Q Was it I am sorry.
20	A I just understood that I would, by making
21	that loan, that any assets that D-Z might acquire,
22	that I might be able to participate.
23	Q Well, did I am sorry.

And as one of the founding fathers or

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whatever.

	Excerpts from Deposition of Harold B. Levin
1	Q Did he tell you in manner you would be 141
2	able to participate in any assets that they acquired?
3	A He did not.
4	Q Did you have any understanding as to what
5	manner you would be able to participate in the assets?
6	A I did not.
7	Q Did you have any understanding that the
8 *	note that you had purchased might be convertible in
9	one form or another to common stock which would give
10	you a participation in assets of D-Z?
11	A That was mentioned as a possibility, but it
12	wasn't promised.
13	Q When was that mentioned?
14	A I think at the time I wrote the or just
15	before I wrote the check, when I was mulling about
16	whether or not to make the loan a week before, I was
17	Q Did you ever, and you were told that
18	by Mr. Zimmerman?
19	A Right.
20	Q Did you ever question why you should put
21	up \$50,000 for a 6 percent note based upon the current
22	market?

(By Mr. McKenna) Did you ever question a Q

question it, does that mean that he --

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MR. GIBERT: When you say did he ever

Excerpts from Deposition of Harold B. Levin 1 142 person, Mr. Zimmerman, Mr. Davis or anybody else 2 that you knew that was connected with D-2? 3 Mr. Zimmerman. 4 Well, did you question it? I asked you Q 5 first -- I will caution you the way Mr. Gibert did 6 andask you to answer my question. 7 MR. GIBERT: Well, my problem was 8 the expression of the question means either 9 direct a question to some other person or 10 it means wonder in his own mind, and I am 11 not sure which you meant. 12 O (By Mr. McKenna) I thought I clarified 13 I attempted to clarify that. Did you question 14 of somebody why should I put \$50,000 in and get --15 for a 6 percent promissory note, when I can get 16 better interest than that from a bank or from some 17 other source? 18 I questioned no one other than Mr. Zimmer-19 man. 20 And what did you say? Did you question Q 21 him about that subject? 22 I asked Mr. Zimmerman what benefits might 23 accrue from my loan, and he indicated to me that this corporation, upon formation, it would -- whatever 24

assets they acquired, that I would be able to

Excerpts from Deposition of Harold B. Levin participate as one of the original investors in $D-\chi$ 143 Corporation.

Q Well, you testified previously, I believe, that no promises were made, but was it your --

A There were no promises. He said that I might be, but he didn't promise me that I might be allowed to participate in any.

Q And you loaned the \$50,000 at 6 percent, based upon the indication that you might be able to participate at some future date?

MR. MARSHALL: I object to the form of the question.

Q (By Mr. McKenna) And the benefits to be obtained from the assets of D-Z?

MR. MARSHALL: I object to the form of the question.

Q (By Mr. McKenna) Is that correct?

MR. GIBERT: That is what he has

already testified to, I believe.

THE WITNESS: I have great confidence in Mr. Zimmerman and Mr. Zimmerman -- I have been in investments, I have been in original investment with him on Fourteenth Street which we brought out previously, and I did not question him or his integrity.

	Excerpts from Deposition of Harold B. Levin
1	Q (By Mr. McKenna) Well, was it then your
2	understanding that notwithstanding the lack of a
3	promise, that you will be able to get in on the ground
4	floor, as you have testified?
5	A Well, when I say ground floor, I mean
6	that as one of the original investors in a new corpora-
7	tion, that I would be permitted to participate in
8	gainful assets that the corporation might acquire at
9	a later date.
10	Q You say you were anticipating that you
11	might obtain more than your 6 percent return on your
12	promissory note?
13	A Not necessarily, but he indicated it was
14	a speculation.
15	Q But that you
16	A And I might not even get the
17	Q The principal back?
18	A That's right, I was not promised.
19	Q But, no, not promised, I said that you
20	might was it indicated to you that you might be
21	able to get more than your 6 percent back?
22	A There was a possibility.
23	Q Did Mr. Zimmerman ever tell you withdraw

Were you ever informed that it was

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the question.

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Excerpts from Deposition of Harold B. Levin

contemplated by D-Z. that it would issue sometime prior

to September 1, 1974, units consisting of common

stock and two year 6 percent promissory notes, such

units of common stock to have a \$100 par value? I

withdraw the question, will rephrase it.

Did Mr. Zimmerman -- well, I withdraw that one, too.

Was it ever indicated to you that it was contemplated that D-Z, sometime prior to September 1st, 1974, would issue units of securities which would contain two year promissory notes at a cost of -- at a principal amount of \$45,000, and four shares of \$100 par value common stock at a cost of \$5,000?

MR. MARSHALL: I am going to object.

MR. GIBERT: What do you mean, indicated?

Q (By Mr. McKenna) Was it indicated in words or substance that there was such an intent on behalf of D-Z?

MR. GIBERT: Excuse me. I have a problem with the form of that question. You mean indicated to him by some means other than delivery of the private placement memorandum in which that information appears?

MR. McKENNA: No, I mean does he know now, does he recall having -- being given

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Excerpts from Deposition of Harold B. Levin
that information and I am including the
private placement memorandum. He has
indicated he didn't review it and all my
questions relate to any information that
he has obtained, that he presently recalls
having been given, whether it be through
the private placement memorandum, which
he didn't review or otherwise.

MR. GIBERT: All right. But I would think that if it -- if the information is contained in a document that is handed to him, as he has testified, then it has been indicated to him, so your question, it seems to me, is either was it pointed out to him in some other manner or does he -- did he recall it?

Q (By Mr. McKenna) Do you recall having been so informed, whether by virtue of this private placement memorandum or otherwise?

A No, I don't.

Q Do you recall ever having read -- well,
I show you the private placement memorandum which is
Exhibit 5, and specifically page 7 through 8, and
then there is an unnumbered page following 8, which
is only a partial page, and beginning with the

1.

heading "Issue of Units under small issue registration, 147 which is in block letters and underlined, and I ask you to read that and then my question to you would be: Do you recall having read that information on or prior to April 29th?

A I don't recall specifically reading that.

Q Ware you ever advised by anyone prior to the time that you were subpoensed for this deposition that you should read that private placement memorandum or the copy that you originally received thereof, which is Exhibit 5, that you should read it and read it carefully?

MR. MARSHALL: I am going to object to the question. I think it is misleading, if you want to give him a specific point in time, you are talking about the entire period prior to receipt of the subpoena.

MR. McKENNA: Oh, I am sorry.

Q (By Mr. McKenna) At any time prior to, at or prior to the time you acquired the note of D-Z on April 29th, 1974, were you ever advised that you should read the private placement memorandum, which is Exhibit 5, or whatever copy thereof that you had been given up to that time?

A I don't recall.

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Excerpts from Deposition of Harold B. Levin

	Q	(By	Mr.	McKenr	ıa)	Up	until	this	point	ín	148
time,	were	you	aware	that	if						

MR. GIBERT: What is this point in time?

MR. McKENNA: This very moment.

MR. GIBERT: Today?

MR. McKENNA: This very moment, that's right.

Well, I will modify the question up to the time you were served with the subpoena to appear here, Dr. Levin, were you aware that any person who purchased one of the units which were contemplated to be offered by D-Z Investment Company, that is, the unit of common stock, and \$45,000 notes would be paying at the rate of \$1250 per share for the common stock of D-Z they received, whereas, the common stock of D-Z that was purchased by Mr. Zimmerman and by Security Management was secured at only \$100 per share?

THE WITNESS: I don't recall.

- Q (By Mr. McKenna) You don't recall having been aware of that? Were you aware of that?
 - A I was not. I don't recall having been

A 1403
Excerpts from Deposition of Harold B. Levin

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1	aware o	f it.	
2	Q	Is that news to you now?	
3	A	That's news to me.	1

* *

Excerpts from Deposition of Harold B. Levin

	Q	(By Mr.	McKenna)	Dr.	Levin,	at any	time ¹⁵²
up	to and	including	the time	you a	acquired	the ne	ete
οf	D-Z, w	ere you in	Formed in	any m	manner,	shape o	r
for	rm that	D-Z might	wage a p	соху с	ontest	to get	
cor	ntrol o	f the REIT	in which	they	were in	teresto	ed?

MR. MARSHALL: I am going to object to the form of the question. You used the term "proxy contest". I think there are some lawyers that don't comprehend all the ramifications of that term.

MR. McKENNA: Well, I am using, for your reference, Mr. Marshall, I am using the word as it is used in page 4 of the private placement memorandum, which is Exhibit 5, and the ultimate sentence on that page reads: "To be successful, the company may have to conduct a proxy contest."

Now, that ought to help the witness.

THE WITNESS: I am aware of that.

- Q (By Mr. McKenna) Were you aware of that at the time you acquired the note on April 29?
 - A Yes, sir.
 - Q And how were you aware of that fact?
 - A Either that he mentioned it just prior to

Excerpts from Deposition of Harold B. Levin

1	the	time	I	gave	him	that	check	or	I	saw	Ĺť:	in	that	1.03
2	men	orand	um.	•										
3		Q		He 1	being	g Mr.	Zimme	cma i	a?					
4		A		Yeal	h, M	r. Zi	min e rma i	a.						

	Excerpts from Deposition of Harold B. Levin
1	Q Were you told anything about the possible
2	expense of such a proxy contest?
3	A No, but I understand everything is costly.
4	Q Were you told that the proxy contest might
5	involve litigation?
6	A No.
7	Q Were you ever told, in fact, that the compan
8	has D-Z has instituted two lawsuits in connection
9	with its attempt to acquire a controlling interest in
10	N.J.B. Prime?
11	MR. MARSHALL: I object.
12	MR. GIBERT: When you say "ever,"
13	that means any time up to today?
14	MR. McKENNA: Right.
15	MR. MARSHALL: I object to that
16	question on the grounds that it is misleading,
17	the way you characterize two lawsuits, or the
18	two lawsuits which you characterize.
19	MR. McKENNA: There may have been more,
20	but I only know of two.
21	MR. MARSHALL: Unless you want to go
22	on and explain, and put to the witness the
23	nature of the two lawsuits. Are you including
24	within that the suit that was commenced to

get the shareholders list after N.J.B. refused

Δ 1407

Excerpts from Deposition of Harold B. Levin

	2.55
1	to produce it?
2	MR. McKENNA: I am referring to the
3	lawsuit commenced in Massachusetts which,
4	I understand, was commenced to obtain a
5	copy of the shareholders list. Were you
6	aware of that lawsuit, that it had been
7	instituted?
8	THE WITNESS: I was aware that there
9	was some lawsuits, but not until fairly
10	recently.

Excerpts from Deposition of Harold B. Levin

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you have asked?

Q (By Mr. McKenna) No, my present quenties, are you aware that in a lawsuit instituted by D-Z, D-Z moved for an injunction of the annual shareholders meeting of NJB Prime Investors and that such injunction was denied, such injunction being sought was a preliminary injunction, I should say.

A I am aware of that.

Q And when did you first become aware of that?

A In a telephone conversation with Mr. Zimmerman.

Q . When was that telephone conversation?

A I guess it was the end of May or in early June, June I would say.

MR. MARSHALL: Well, I --

Q (By Mr. McKenna) Okay. To refresh your recollection, I believe that the injunction was denied on -- I would rely on Mr. Marshall for the history because I don't remember.

MR. MARSHALL: For the record, I think it would be helpful to you, Mr. Mckenna, if I state: This action, D-Z versus Hollowny, et al, was commenced on June 3, 1974. The preliminary injunction application brought

	7 1103
	Excerpts from Deposition of Harold B. Levin
1	on by D-Z was argued before Judge Kannelo 161
2	on June 7, 1974, and Judge Rannelo denied
3	that application on June 11, 1974.
4	Q (By Mr. McKenna) Does that help to refres
5	your recollection?
6	A That helps. I think it was around the
7	middle of June then.
8	Q Are you presently aware of whether or not
9	D-Z is, in fact, soliciting proxies to obtain the
10	call of a special shareholders meeting of NJB Prime
11	Investore?
12	A Yes.
13	Q And how are you aware of that fact?
14	A I was informed of it when I was informed
15	that there was some litigation in the middle of June.
16	Q The same time, the same conversation with
17	Mr. Zimmerman, he told you about the injunction?
18	A I believe so.
19	Q And what did Mr. Zimmerman tell you, in
20	words or substance, about the soliciation of such
21	proxies?
22	A I don't recall the exact words.

Well, do you recall in substance what

he told you, what they were attempting to do, how

many they were attempting to solicit, anything in that

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Q

the annual June meeting of a special meeting, in

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other words?

Excerpts from Deposition of Harold B. Levin

A No specific details to my knowledge.

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MR. McKENNA: Let me see if I can explain. My understanding is that a motil was brought for preliminary injunction to enjoin the shareholders from meeting. The motion was denied. The annual shareholders meeting went ahead. I want to know if y were told that after the denial of that motion and the lack of success of D-Z of having the annual shareholders meeting

Excerpts from Deposition of Harold B. Levin delayed, that the company, or persons acting on behalf of the company, were, is fact, soliciting further promies or conscient to attempt to obtain another meeting to called, a special meeting. That is my question.

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I think it is fair th t MR. GIBERT: the witness know, since you are -- it is fair that the witness know that the original complaint referred to the need of D-Z to have more time to solicit proxies, and f r that reason, sought to enjoin the holding of the stockholders meeting. Now, then, the stockholders meeting was nevertheless held, and I want the witness to understand that, although I think you have said it, I think he must understand we are talking of not solicitation of proxies in connection with the original stockholders meeting. is asking now not did you knew about that effort, but is there another effort going on, and do you have any knowledge about it.

THE WITNESS: None to my knowledge.

Q (By Mr. McKenna) Have you communicated with any person you know or knew to be a shareholder

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Excerpts from Deposition of Harold B. Levin of N.J.B. Prime about voting for the call of a special 166 2 meeting or about voting at the annual meeting? 3 No. 4 Dr. Levin, where did you obtain the funds Q 5 which you used for the purchase of the D-Z note? 6 Hard work. 7 Did you pay for that note from cash that Q 8 you had in your savings? 9 Yes. 10 Or did you borrow the money? 0 11 I did not borrow it. From my savings. Did you tell Mr. Zimmerman where you were 12 Q getting the funds? 13 Mr. Ziumerman? 14 My question is, did you tell him? Q 15 I don't recall telling him. 16 Did he ask? 17 There may have been some discussion about 18 Mr. Zimmerman is aware of my financial situation. 19 Did Mr. Zimmerman or anyone else on behalf 20 of D-Z ask you for a financial statement before you 21 acquired the note? 22 I'd hardly think he would have to ask me. 23 Q My question is not what your mental operation 24

is, but do you recall, in fact, that you were asked for

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	Excerpts from Deposition of Harold B. Levin
1	a financial statement?
2	MR. MARSHALL: You are asking him
3	for his own personal financial statement?
4	MR. McKENNA: Yes.
5	THE WITNESS: He might have asked.
6	He might have asked me.
7	Q (By Mr. McKenna) Do you recall
8	A We have had a discussion. I don't recall,
9	you know, when I was pondering over whether or not to
10	make the loan, what I considered as making a loan. He
11	was aware of my financial situation and that I maintain
12	a substantial sum in the checking account.
13	Q Well, I move to strike that all. It is
14	not responsive. My question is simply did he ask you
15	for a financial statement? Do you recall whether he
16	did or not? I don't want you to speculate.
17	A No.
18	Q Do you know who else purchased notes of
19	D-Z?
20	A I have seen the list of people that was in
21	the list. I saw the names of the holders of the notes.
22	Q And where did you see that list?
23	A I saw that on the list at one of the
24	communications that shows how much each one of them

has. One of these. Some of the material shows about

Δ 1415

Excerpts from Deposition of Harold B. Levin six names. One owns \$100,000. Each of about five 168 other people, \$50,000.

MR. GIBERT: Are you looking for 3A and 3B? I think that's -- I think they are among your papers.

(Thereupon, an off the record discussion was had.)

Q (By Mr. McKenna) In your last enswer in which you indicated you had seen the list of purchasers and the amounts they purchased in the document, were you referring to any of the documents which are marked as Exhibit 3A through 3D, the schedule 13D's?

A It shows there.

Q I'm asking you -- my present question is are those the documents referred to?

A I have to see it. I have to see it to know. I believe that's the document.

MR. GIBERT: I just showed you the 3A and amendment number one. I show you that because you mentioned the number 100,000.

THE WITHESS: Yes.

Q (By Mr. McKenna) Now, apart from those schedules which are a part of those 13D's and answers to those 13D's, which are exhibits here, do you have

	Excerpts from Deposition of Harold B. Levin
1	knowledge as to who purchased notes?
2	A Aside from that, I did not.
3	Q Did you know prior to today who the other
4	note purchasers were?
5	A Yes, when I caw that list previously.
6	Q You saw that list in one of those 13D's
7	at some time previously?
8	A I saw that list of
9	Q You saw the list but you are not sure it
10	was in the 13D statement?
11	A I don't know what yes, I'm not certain
12	where I saw it.
13	Q Do you know when you saw it?
14	A I didn't see that list until efter I had
15	put up my money. I'm certain it was after April the
16	29th.
17	Q Did you know beforehand, before you put
18	up your money, who else was being approached by Mr.
19	Zimmerman or anybody associated with him in connection
20	with this investment?
21	A I didn't know for certain.
22	Q Did you know not for certain? Did you have
23	any information about it?
24	A No, the only the answer is no.

Did you suggest any other persons to Mr.

A 1417 Excerpts from Deposition of Harold B. Levin

Zimmerman who might be interested?

A No.

Q Did you discuss this investment opportunity
with any others who, to your knowledge, had not been
approached by Mr. Zimmerman?

A No.

Excerpts from Deposition of Harold B. Levin

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Q I may have asked this, and I will accord
a representation if I have, but do you have presently
any knowledge or information about others who were
approached or asked to or invited to buy notes of
D-Z, other than those listed in Schedule 13-D statements, which are Exhibits 3A through 3D?

A No.

Q Prior to your acquiring the D-Z note, had you been informed of any prior business dealings between Mr. Zimmerman and Mr. Davis and/or his company. Security Management, other than the Fourteen Street investment in which you had a common interest?

A No.

Q Prior to your acquiring that 6 percent promissory note of D-Z, had you been informed of any prior business dealings between Mr. Zimmerman and Mr. Saul Becker, in respect of sharing commissions on real estate brokerage?

A Prior to the Fourteenth Street, Fourteenth --

Q No, no, prior to your acquisition of the 6 percent to D-Z.

A Well, they were involved in this Fourteenth Street transaction.

Q No, apart from Fourteenth Street.

Excerpts from Deposition of Harold B. Levin

A	No.
A	140.

Apart from Fourteenth Street, had you been informed prior to your acquisition of the note of any business dealings between Mr. Zimmerman and Mr. Saul Becker?

A No.

Q Dr. Levin, I refer you to the note which is Exhibit 4 for identification, and particular -- well, just a minute. I will withdraw that question.

nemorandum which is Exhibit 5, and to page 3 thereof, the first two sentences, which I will read: "The notes are being offered and sold without registration and under the Securities Act of 1933, as amended. In reliance upon exemptions for registration for non-public offering, the availability of such exemption depends, in part, upon the accuracy of certain representations and declarations and warranties which a purchaser will be required to make."

Do you now recall any representations, declarations or warranties which you made in connection with your acquisition of the 6 percent promissory note of D-Z? I am asking you now of your own recollection, without reference to any documents.

A Well, but you are asking me what?

	A 1.420
. 11	Excerpts from Deposition of Harold B. Levin
1	Q If you recollect now any representations
2	or warranties well, let me take them one at
3	time. Any representations that you made in connection
4	with your acquisition of the 6 percent promissory
5	note of D-Z?
6	A I don't understand the question. You asked
7	me did I make any declarations?
8	Q Do you recall now that you made any
9	representations in connection with your acquisition
10	of that note?
11	A Not to my knowledge.
12	Q Were you informed at any time prior to at
13	the acquisition of the this 6 percent premissory
14	note of D-Z, that the stock which D-Z would be pur-
15	chasing in the REIT in which it was interested would
16	be collateral for margin debt?
17	MR. MARSHALL: I am sormy, would you
18	repeat that question, please, Mr. Reporter?
19	(Thereupon, the question was read by
20	the reporter.)
21	Q (By Mr. McKenna) In which it was interested
22	would be collateral for margin debt.
23	MR. GIBERT: I believe he testified

this morning that he didn't know enything

about any margin transaction. Am I mistaken

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Excerpts from Deposition of Harold B. Levin

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about that?

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I don't recall.

You don't recall ever having been so informed, even after seeing this document now?

MR. McKENNA: If he did, I missed it.

THE WITNESS: Yes, I testified to that earlier, that I knew of no marginal --

MR. McKENNA: I don't believe I asked any such questions, I am quite certain I did I would therefore ask for an answer to my question.

MR. GIBERT: All right. I will not object.

> THE WITNESS: No.

Q (By Mr. McKenna) Well, I show you or I ask that be put before the witness Exhibit 5, the private placement memorandum, and I refer you to page 6, the next to the last paragraph thereof, which I "The stock purchased by the company will be collateral for the margin debt."

Does that refresh your recollection that you were informed at or prior to the time you acquired your D-Z note that the stock purchased by the company, the REIT stock purchase by the company, would be collateral for the margin debt?

	Excerpts from Deposition of Harold B. Levin
1	A Well, I understood it would be that 175
2	my money, at least, the money from these notes, might
3	be used to acquire stock, but as to it being marginul
4	collateral or
5	Q Well, did you understand that part of the
6	purchase price of the stock that would be acquired with
7	your note would also be put up by a brokerage firm,
8	which would do so on the basis of margin borrowings?
9	A Not to my knowledge.
10	Q And that that brokerage firm would hold the
11	stock as collateral for these margin borrowings, or
12	were you so informed?
13	A Not to my knowledge.
14	Q Do you recall being withdraw the
15	question.
16	Were you informed at any time prior to you?
17	acquisition of the 6 percent promissory note of
18	D-Z that other than the hundred thousand dollars
19	which was put up by Security Management Company of
20	Mr. Zimmerman, D-Z would not use any of the proceeds
21	of the notes, including your own, until at least
22	\$500 000 in proceeds had been madefued?

A That was my understanding.

23

24

- And how were you so informed?
- Either verbally or I saw it in writing

Excerpts from Deposition of Harold B. Levin

,	somewhere.
2	Q Do you recall any agreement having been
3	made to change that understanding or term?
4	A There might have been an amendment. I
5	remember seeing amendments somewhow and I'm not
6	certain where I saw
7	Q An amendment that related to that term?
8	A Not to that term necessarily.
9	Q The amendments you are referring to, are
10	those the amendments to the Schedule 13 D which are
11	Exhibits 3B through D?
12	A I can't be certain.
13	Q Do you recall seeing any other amendments
14	than those?
15	A I can't be certain.
16	Q Have you ever heard of the firm of Canter,
17	Fitzgemald and Company, Inc.?
18	A Nove.

	-	2000				
Excerpts	from	Deposition	of	Harold	R.	Lonin

	Excerpts from Deposition of Harold B. Levin
1	Q Other than your loan to D-2 represented 177
2	by the six percent promissory note you received from
3	D-Z, have you ever loaned money which was to be used
4	specifically for the purpose of purchasing stock?
5	A No.
6	(Thereupon, there was a brief recess.)
7	Q (By Mr. McKenna) Dr. Levin, have you ever
8	been informed that D-Z Investment Company was purchasing
9	stock in R.E.I.T.'s other than N.J.B. Prime?
10	A No.
11	Q Was it your understanding based upon what
12	you have been told by Mr. Zimmerman that D-Z would be
13	attempting to acquire an interest in only one R.E.I.T.?
14	MR. GIBERT: Was it his understanding?
15	At what time is that?
16	MR. McKENNA: At or prior to the
17	time you acquired the six percent promissory
18	note of D-Z.
19	THE WITNESS: The question?
20	Q (By Mr. McKenna) The question is whether
21	or not you understood from what you were told by Mr.
22	Zimmerman that there would only be one R.E.I.T. that
23	D-Z, once it selected whatever one it was, would be
24	purchasing the stock of in attempting to gain sufficient

interest in to exercise control?

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Q Were you told that -- was it your understanding that there would be more than one?

A I indicated earlier today that he only pointed to A, B, C, D listings of R.E.I.T.'s.

Q Did he indicate to you in that conversation that of these four, or whatever there were, A, B, C, D, that it was the intention of himself and his associates to purchase only -- to target in, is the word you used, on only one?

MR. MARSHALL: I object to you saying that is the word he used because we went through that before, and I think we need not go through it again, and the record speaks for itself on that. The target referred to your characterization.

MR. McKENNA: No, I did not use the word "target." I don't want to go through that either.

To zero in on only one R.E.I.T.

MR. GIBERT: If I could say, was
D-Z to be interested in one or more than
one, whichever one that was selected,
whether you are going to be buying into
more than one or just one, is that what

Excerpts from Deposition of Harold B. Levin

1	to	17
2	MR. McKENNA: I'll accept your	
3	question.	
4	THE WITNESS: I understood there	
5	was one, but whether it was going to be	
6	necessarily an R.E.I.T. or not, I didn't	
7	know. This was just selected as four,	
8	A, B, C, D, which happened to be R.E.I.T.'s.	
9	But I wasn't aware at the time with certainty	
10	that it was an accumulation in a particular	
11	R.E.I.T. It might have been any kind of	
12	business as far as I was concerned.	
	•	

Excerpts from Deposition of Harold B. Levin

A (Continued) My answer should be no to 180 that question.

MR. GIBERT: Touche.

THE WITNESS: I like to talk...

Q (By Mr. McKenna) Dr. Levin, I would like to have put before you again the private placement memorandum, which is Exhibit 5 for identification.

MR. GIBERT: I have it. What page you want him to --

MR. McKENNA: No specific page.

Q (By Mr. McKenna) I just wanted to cak you now, based upon the questions and answers that we have just had this afternoon, since you produced this document and upon your having referred to it on occasion in reference to some of these questions and answers, if you can -- if your recollection has been refreshed to any extent as to when you, in relation to April 29th, when you purchased the note, you first received a copy of this private placement memorandum.

A I don't recall.

Q Do you have any specific recollection that you received a copy of it before April 29th, 1974?

A I don't recall.

Q Do you have any specific recollection that you received a copy of it before April 30th, 1974?

Excerpts from Deposition of Harold B. Levin

1	A I don't recall.	181
2	Q Do you have any specific recollection,	
3	just to be careful, that you received a copy of it	
4	before you purchased the note?	
5	MR. MARSHALL: I think you just asked	
6	him that question.	
7	MR. McKENNA: Well, I just want to be	
8	sure I am not confusing him with reference to	
9	dates. I don't want to mislead the witness.	
10	THE WITNESS: I don't recall.	
11	MR. McKENNA: I have no further question	. 0
12	at this time.	

EXCERPTS FROM DEPOSITION OF BERNARD KROLL

IN THE UNITED STATES DISTRICT GOURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY,

Plaintiff,

CIVIL ACTION

-vs
NO. 74 Civ. 2379

ROBERT E. HOLLOWAY, MELVIN

S. TAUB, NAURICE J. BRICK,

PETER E. SIMON, HORMAN

BRASSLER, CHARLES GILLER,

BEREERT E. MARPER, DR.

GORDON MCKINLEY, JAMES R.

MOSELEY, ITI, JACK C.

TAYLOR, DALLAS S. TOWNSEND,)
JR. and HJB PRIME INVESTORS.)

Defendants.

Deposition of MR. BERNARD KROLL, taken
by the Defendants, pursuant to notice and
subposens and the Federal Rules of Civil
Procedure, before Forrest M. Brown and
Stuart S. Huseby, Court Reporters and Notaries
Public, at 2700 First National Bank Tower,
Atlanta, Georgia, on the 19th day of July,
1974, commencing at the hour of 10:50 s.m.

APPEARANCES OF COUNCEL:

2

1

For the Plaintiff:

STEPHEN A. MARSHALL, Egg.

3

For the Individual Defendants:

PETER D. MCKEMNA, Esq.

4 5

ment and Ralph

For Security Manage- S. ALAN COHN, Esq.

Becker:

6

7

For the Defendant
NJB Prime Investors:

DAVID PARKER, Esq.

8

For the Deponent:

S. JARVIN LEVISON, Esq. HUGH W. GIBERT, Esq. DAVID ROSS, Esq.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED

that the within examination may be subscribed

and sworn to before any notary public with

the same force and effect as though subscribed

and sworn to before this Court.

MR. BERNARD KROLL,

Excerpts from Deposition of Bernard Kroll

2	being fir	st duly sworn, was examined and deposed as
3	follows:	· ·
		* * *
11		EXAMINATION
12	BY MR, Mo	KENNA:
13	Q	Mr. Kroll, state your full name, please.
14	A	Bernard Kroll.
15	Q	And what is your present residence address?
16	A	4720 Paran Valley, N. W., Atlanta, Georgie.
17	Q	You have a business address in Atlanta?
18	What is	that?
19	. A	400 Colony Square, Suite 2100.
20	Q	What is your occupation?
21	A	President of Holder Construction Company.
22	Q	And what, in general, is the nature of
23	Holder	Construction Company's business?
24	A	General contractors.
25	Q	You have any other occupation?

A 1432 Excerpts from Deposition of Bernard Kroll

	.1
A	No.
Q	Did there come a time when you purchased a
pote or no	tes of D-Z Investment Company?
A	Yes, sir.
Q	And did you make more than one such pur-
chase?	
A	Yes, sir.
Q	And when was the first such purchase?
A	I don't remember. I have got two of them.
Q	Do you have with you today the notes that
you purcha	
A	Yes, sir.
Q	May I have those produced, please?
	Q pote or no A Q chase? A Q A Q you purcha

Excerpts from Deposition of Bernard Kroll

The first one today would be number seven.

Does anybody disagree with that?

MR. GIBERT: I have no opinion on that.

MR. McKENNA: I meant with the number. I thought we had agreed on the sequential order.

I notice the first document I have here apparently had a staple in it, and the staple has apparently come loose or been removed. Do we have a stapler around here?

Okay. I'd like to mark as Exhibit 7
for identification to Mr. Kroll's deposition,
a document entitled "D-Z Investment Company,
private placement memorandum," dated April
24, 1974, with an Exhibit 1 consisting of
two pages, and Exhibit 2 consisting of
seven pages, and Exhibit 3 consisting of
eight pages annexed thereto.

MR. GIBERT: Mr. McKenna, I have just been advised by the witness he gave me two of those. I must have inadvertantly left the other --

THE WITNESS: There is two \$50,000 notes.

Excerpts from Deposition of Bernard Kroll

MR. GIBERT: No, he's talking about the private placement memorandum.

MR. McKENNA: I might note that I don't see any note in the group of papers.

MR. GIBERT: I must have inadvertantly failed to pick it up.

THE WITNESS: Two executed notes and two of those.

MR. McKENNA: I'll continue.

MR. GIBERT: Go ahead marking.

MR. McKENNA: As Exhibit 8 for identification, a letter of June 6th, 1974, on the letterhead of Security Management, addressed to Bernard Kroll.

As Exhibit 9 for identification, a letter on the letterhead of D-Z Investment Company, dated June 11, 1974, to Mr. Bernard Kroll, with -- no, the letter and the Lext refers to a questionnaire enclosed, and there is attached to the letter a document entitled N.J.B. Prime Investors Questionnaire as of May 30, 1974 in connection with proposed proxy solicitation, and consisting of nine pages.

MR. MARSHALL: I suggest you mark the

2

Excerpts from Deposition of Bernard Kroll questionnaire as Exhibit 9A.

MR. McKENNA: I agree. A subpoena issued from the Northern District of Georgia -- United States District Court, Northern District of Georgia, D-Z Investment Company, E. Robert Holloway, and the subpoena issued to Bernard Kroll, dated July 9, 1974, and annexed thereto, a notice of deposition dated July 5, 1974, consisting of three pages, which will be Exhibit 10.

Exhibit 11 is a letter of July 10,

1974, on the 1 'terhead of Wachtell,

Lipton, Rosen and Katz, addressed to Mr.

Bernard Kroll, which refers to and encloses

copy of an order, and attached thereto is,

in fact, a copy of an order to show cause

with stay from the United States District

Court from the Southern District of New

York, dated July 9th, 1974.

A letter of July 12, 1974, on the letterhead of Wachtell, Lipton, Rosen and Katz, addressed to Mr. Bernard Kroll.

That will be Exhibit 12 for identification.

And a letter dated July 12, 1974, addressed to Mr. Bernard Kroll, and bearing

Δ 1436

Exserpts from Deposition of Bernard Kroll

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1	the typewritten signed D-Z Investment
2	Company by Jerome Zimmerman, Vice President.
3	MR. MARSHALL: Is that all?
4	MR. McKENNA: That's all that has
5	been produced so far. All of the above
6	documents described were just produced to
7	me by Mr. Gibert.
8	(Thereupon, the court reporter marked Exhibits 7, 8, 9, 9A, 10,
9	11 and 12 for identification.)
10	(Thereupon, an off the record
11	discussion was had.)
12	

Excerpts from Deposition of Bernard Kroll

MR. McKENNA: I am at this time giving 19 to the reporter to mark for identification one copy each of a note of D-Z Investment Company, 6 percent promissory note due March 31, 1975 in the amount of \$50,000; the first being dated 30 April, 1974, and issued to Bernard Kroll, and the second being dated 16 May, 1974, and issued to Bernard Kroll.

(The notes referred to were marked for identification as Exhibits 14 and 15 to the deposition.)

MR. McKENNA: Such notes having now been marked as Exhibits 14 and 15 respectively, and I am handing one set to Mr. Marshall, taking one set for myself, and another set which I will return to Mr. Gibert. I would also like to note for the record that I have delivered to Mr. Gibert this morning the original of yesterday's deposition transscript of Dr. Levin. Do you have it or, at least, I left it on the table?

MR. GIBERT: Is this the original?
You are right.

MR. McKENNA: Okay. I had a question

Excerpts from Deposition of Bernard Kroll

36 * * *

17	Mr. Kroll, I put before you the note,
18	copy of the note marked as Exhibit 14 for
19	identification, which is dated 30 April 1974,
20	and ask you if you can identify that document
21	THE WITNESS: I can.
22	Q (By Mr. McKenna) What is it?
23	A It's a promissory note.
24	Q Is it a note that you received from D-Z
25	Investment Company?

	Excerp	ts from Deposition of Bernard Kroll
1	A	Yes, sir.
2	Q	And when did you receive that note?
3	A	April 30.
4	Q	And I put before you the note dated May
5	16, or 16 M	ay, which is Exhibit 15 for identification,
6	and ask you	if you can identify that note.
7	A	A promissory note.
8	Q	And that is the note which you received from
9	D-Z Investm	ent Company?
10	Λ	It is.
11	Q	Was that received on May 16?
12	A	It was.
13	Q	And did you pay for each of these notes
14	the amount	set forth as the face amount thereof, namely,
15	\$50,000?	
16	A	Yes, sir.
17	Q	And who did you deliver that money
18	A	Jerome Zimmerman.
19	Q	In what form?
20	A	Check.
21	Q	At the same time you received the notes?
22	A	Yes, sir.
23	Q	Where did you receive the notes?
24	A	Where did I receive the notes?
	I	

Where were you physically when you received,

Excerpts from Deposition of Bernard Kroll

1	let's say, the first note, which is Exhibit 14, on
2	April 30?
3	A It was in the Merchantile Bank.
4	Q And where were you when you received the
5	note of 16 May?
6	A Merchantile Bank.
7	Q And Mr. Zimmerman was with you on both
8	occasions?
9	A Yes, he was.
10	Q And what was your purpose for being in the
11	Merchantile Bank?
12	A That's where I borrowed the money.
13	Q You borrowed the money from the Merchantile
14	Bank to pay D-Z Investment Company for these notes, is
15	that correct?
16	A That's right.
17	Q Did you give the bank any collateral for
18	the loans that you made to purchase these notes?
19	A No. sir.

1	Q Did you prepare any applications to the
2	bank for the purposes of obtaining the loan to purchase
3	the notes?
4	A Financial statement.
5	Q Just a you gave them your own financial
6	statement?
7	A Yes, sir.
8	Q I would call for a copy of the financial
9	statement that was given to the bank to obtain the
10	loan to pay for these notes.
11	Other than the financial statement that
12	you gave to the bank, was there any other documents
13	which were prepared in connection with your obtaining
14	the loan from the bank to obtain money to purchase
15	the notes of D-Z Investment Company?
16	A I didn't understand he question.
17	Q Wcll, was there any application for a loan,
18	any other documents that you had to give the bank in
19	order to obtain the money?

* * *

No.

	w Tara
1	Excerpts from Deposition of Bernard Kroll
	able, I would hope.
2	Q (By Mr. McKenna) Mr. Kroll, the bank or
3	any officer or official of the bank ask you any
4	questions concerning your intended use of the proceeds
5	
6	of the loan you were obtaining from the bank?
7	A I don't recall.
	Q Can you tell me what interest you are paying
8	on that loan?
9	A One percent per month.
10	Q Was that loan taken by you personally or
11	by some other entity?
12	A By me personally.
13	
14	Q Can you tell me what branch of the Mercanuile Bank the loan is?
15	Bank the Toan 1s?
	A I think there is only one, downtown.
16	Q Would you give me the address of it?
17	A I don't know the address.
18	MR. GIBERT: It is on Broad Street,
19	it is the only well, there is now a
20	branch. It is the world's spallest bank.
21	
22	MR. LEVISON: That is not so.
	MR. McKEHNA: Is that one of your
23	clients, Mr. Levinson?
24	MR. LEVISON: I saw some statistics

where it said it was ninth out of ten in

Excerpts from Deposition of Bernard Kroll 1 43 Atlanta. 2 (Discussion was had off the lacord.) 3 MR. GIBERT: It is on Broad Street, 4 and we can give you a precise address. 5 MR. McKENNA: I would appreciate it 6 if I can get that. 7 MR. ROSS: 70 Broad Street, I believe: 8 is that it? 9 MR. LEVISON: 70 Broad Street. 10 (By Mr. McKenna) Mr. Kroll, did you sign Q 11 any notes to the bank in connection with your loan 12 from the bank? 13 Certainly I did. A 14 Q Do you have copies of those notes? 15 A Yes, sir. 16 MR. McKENNA: I would also call for 17 production of those notes. I assume by your 18 silence you are reserving on my request? 19 MR. GTBERT: Yes, I am reserving on 20 all requests. 21 MR. McKENNA: Okay, fine. MR. GIBERT: That wasn't a question, 22 though, and it didn't seem to call for a 23

MR. McKENNA: Well, again, I would

reply.

24

Excerpts from Deposition of Bernard Kroll

like to be advised promptly whether or not

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these things are going to be produced.

MR. GIBERT: All right, as promptly as I can.

MR. McKENNA: I think at the very least I am entitled to a response as to whether or not they are going to be produced.

MR. GIBERT: As promptly as I can.

Q (By Mr. McKenna) The loan that you made from the Mercantile Bank in connection with purchasing the D-Z notes, was that one loan or two separate loans?

A There was one loan for \$50,000 when I took -- when I bought the first note, and that loan was paid off subsequent to another loan for \$100,000, which I bought the second note.

Q At the time you obtained the notes from Mr. Zimmerman, well, on the first occasion, was anybody else present other than Mr. Zimmerman, yourself, and whatever official of the bank may have to have been there to process the loan?

MR. GIBERT: It is not in there that an official of the bank was present. He stated that he wasin the bank and that he

Excerpts from Deposition of Bernard Kroll

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was in the bank because that is where he borrowed money, but he didn't say --

MR. McKENNA: I am not assuming that there was, I am just not concerned with whether or not there was an official of the bank present. Well, I will withdraw the question and ask another one.

Q (By Mr. McKenna) Was a bank official present when you obtained the loan from Mr. -- when you obtained the notes from Mr. Zimmerman?

A Yes, sir. Oh, wait a minute, when I obtained the note from Mr. Zimmerman?

Q Yes.

A No, sir.

Q Was anybody else present on either occasion when you obtained the notes from Mr. Zimmerman?

A No, sir.

Q At the time that you received the notes which are Exhibit. 14 and 15 for identification, did you execute any other documents in connection with your obtaining those notes?

MR. GIBERT Just a minute. What is "in connection with your obtaining those notes"?

MR. McKENNA: Well, in any way whatsoever

having anything to do with his obtaining the notes, did he sign any other documents, a receipt, a representation, a letter or anything else at the time. Right now I am talking about only as of the time he actually obtained the notes.

MR. GIBERT: At the time Mr. Zimmerman delivered the notes to him, did he sign any document such as a receipt?

MR. McKENNA: Such as a receipt or any letters or any other documents which he signed and gave to Mr. Zimmerman.

MR. GIBERT: Fine.

THE WITNESS: No, sir.

Q (By Mr. McKenna) Did you ever sign any documents which you gave to Mr. Zimmerman or D-Z Investment Company in connection with your obtaining the notes which are Exhibits 14 and 15?

A No, sir.

Excerpts from Deposition of Economic Xmoll

	and the second s
1	Q (By Mr. McKenna) Let me be more specific,
2	Mr. Kroll. I show you the document which is entitled
3	Exhibit 3, "Certificate and Purchase Order," which is
4	one of the it is Exhibit 3 to the private placement
5	memorandum previously marked as Exhibit 7 on your
6	deposition, and ask you specifically if you recall
7	having signed any such document as that Exhibit 3, or
8	any other copy or version thereof.
9	A Yes, sir, I did.
10	Q You did sign such a document?
11	A Yes, sir.
12	Q Do you recall when you signed such a
13	document?
14	A Same time
15	Q You obtained the note?
16	A obtained the note.
17	Q Did you sign two separate
18	A Two separate
19 ₈	Q certificates and purchase orders?
20	A Yes, sir.
21	MR. GIBERT: Excuse me. Let him
22	finish his question.
23	Q (By Mr. McKenna) One in connection with

Yes, sir.

Δ 1448

Excerpts from Deposition of Bernard Kroll

Q Other than that, do you recall any others 48 that you signed in connection with the note?

A No, sir.

MR. MARSHALL: Mr. McKenna, so the record is clear, you just showed the witness, I believe, Exhibit 3 to the private placement memorandum, and I apologize if I'm wrong, but I don't believe you described that document. And since there are so many exhibits, and there are exhibits to exhibits, I think it would be helpful for the record if we reflect the exhibit you just showed to the witness, and which he acknowledged signing on two separate occasions is entitled "Certificate and Purchase Order."

MR. McKENNA: Yes. I encompassed that in my later questions, and the witness did in his answer also.

MR. MARSHALL: I apologize to you.

I missed that.

MR. McKENNA: No, I am always happy to have a clear record.

Mr. Kroll, are you being represented on this deposition by an attorney?

A 1449 Excerpts from Deposition of Bernard Kroll

	49
1	THE WITNESS: Yes.
2	Q (By Mr. McKenna) Is Mr. Gibert representing
3	you?
4	A Yes.
5	Q Did you retain Mr. Gibert or his firm to
6.5	represent you on this deposition?
7	A No, sir.

1450

Excerpts from Deposition of Bernard Kroll

61 1 (By Er. McKenra) Mr. Eroll, are you aware of any amendments -- and when I say amendments, I mean documentary, physical amendments that have ever been 3 prepared to the private placement memorandum, which is Exhibit 7 to your deposition?

No. sir.

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Are you aware of any changes that were Q planned to the private placement memorandum? And when I say changes, I mean changes that were not reduced to a physical writing in a document?

> A No, sir.

Have you ever been informed that any of the terms set forth in the private placement memorandum, which is Exhibit 7 for identification on your deposition, have not been complied with?

.... A No. sir.

When did you first hear of the opportunity Q to make the investment which is represented by the promissory notes which you ultimately purchased of D-Z Investment Company?

> A Some time in April.

Q Do you recall what time in April?

No, sir. A

How did you hear of it? Q

From a phone call from Mr. Zimmerman.

	W TAOT
	Excerpts from Deposition of Bernard Kroll
1	Q That's Jerome Zimmerman? 62
2	A Yes, sir.
3	Q How long have you known Mr. Zimmerman?
4	A Five or six years.
5	Q Do you have any record of that telephone
6	call?
7	A No, sir.
8	Q Did you make any notes of the telephone
9	call?
10	A No, sir.
11	Q With respect to the date of the private
12	placement memorandum, which is April 24, 1974, can you
13	fix the telephone conversation you had with Mr. Zimmerman
14	in relation to that date? Namely, was the telephone
15	conversation before or after to the best of your
16	recollection?
17	A Relevant to a private placement memorandum
18	relevant to a promissory note you better rephrase
19	the I don't understand the question.
20	Q I'm just asking you if this you said
21	you received a telephone who initiated the telephone
22	call?
23,	A Mr. Zimmerman.
	Q Can you fix the date of that call in relation

to the date which is on this private placement memorandum?

Excerpts from Deposition of Bernard Kroll

A	It	WES	prior	to	thia	dato
		***	Prior	LU	LILL	uate.

- Q It was prior to April 24th, 1974?
- A Yes, sir.

Q What did Mr. Zimmerman say to you, and what did you say to him in that telephone conversation?

A To the best of my recollection he called to tell me that there was an opportunity to invest in a situation in which he was forming a separate corporation, in which to buy the stock of an REIT, and that there was a chance that if enough stock was purchased they could control -- that the stock was selling low and had a high book value, and that there was some -- there was a chance to control the stock because of the way the stock was being -- control the company because of the way the company was now being run. Or companies. It was plural. He was talking about more than one company at the time.

Q Was he talking about buying the stock of more than one company or buying stock of one company among several possibilities?

- A One company among several possibilities.
- Q Anything else he said in that conversation?
- A No, sir.
- Q Did he say anything about the nature of the -- withdraw the question.

	H 1300
	Excerpts from Deposition of Bernard Kroll
1	(Thereupon, an off the record
2	discussion was had.)
3	Q (By Mr. McKenna) Do you recall anything
4	else Mr. Zimmerman said in that telephone conversation?
5	A No, sir.
6	Q Bid he say anything to you about what your
7	participation might be in this company that he was
8	forming?
9	A Nothing more than a note holder.
10	Q Did he specifically mention a note holder?
11	A Yes, sir.
12	Q Did he mention what the interest rate
13	would be on the note?
14	A Not at that time.
15	Q Did he indicate that the note might at some
16	future date be converted into some other type of invest-
17	ment?
18	A On the initial telephone conversation?
19	Q Yes.
20	A No.
21	Q He didn't? Now, what you have told well
22	do you recall anything else he said in the initial

What did you say to him?

telephone conversation?

No.

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1	A I said I needed some more information. 65
2	Q Is your recollection today clear that
3	what you have now testified to as what Mr. Zimmerman
4	told you in that telephone conversation, he in fact
5	told you in that telephone conversation as opposed to
6	some other time?
. 7	A Yes.
8	Q And what was the conclusion of your telephor
9	conversation?
10	A That we would get together again.
11	Q Did you make a specific date?
12	A No, but we did meet again at lunch.
13	Q And do you recall when that lunch was?
14	A No. It was again in April.
15	Q Can you fix the lunch in relation to the
16	A Prior to April 24th.
17	Q Prior to April 24th, which is the date on
18	the private placement memorandum?
19	A Yes.
20	Q How did you come to be having lunch with
21	Mr. Zimmerman on that occasion?
22	A Well, I see Jerome very often, and at one
23	of the times we talked at the club we set up a luncheon
24	appointment.

Q Is this the Standard Club you are referring

Excerpts from Deposition of Bernard Kroll

1	to?		66
2	A	Yes.	
3	Q	Was the lunch at the Standard Club?	6
4	A	No.	
5	Q	Do you recall where the luncheon was?	
6	A	At the Coach and Six.	
7	· Q	Do you	
8	A	He paid.	
9	Q	Mr. Zimmerman paid?	
10	A	I don't know if that's	
11	Q	That was going to be my next question, wh	10
12	paid. Do	you know how he paid, by cash or check or	
13	credit car	d?	
14	. A	I don't recall who paid, really. I reall	y
15	don't. I	was joking.	

	Excerpts from Deposition of Bernard Kroll
1	Q Yor being facetious before? 67
2	A Yeah.
3	Q Okay. Well, I don't want to know who paid
4	now you really den't have a recollection?
5	A I really don't recall.
6	Q Do you have a recollection that you went
7	Dutch, you each paid your own?
8	A No, one of us paid.
9	Q What is your best recollection as to who
10	it was?
11	A I really don't remember.
12	Q If you had paid, would you have paid by
13	cash or by check, by credit card?
14	A Well, by cash.
15	Q Your practice would have been to have paid
16	by cash?
17	A Yeah, since it wasn't pertaining to my
18	immediate business, it would have been cash.
19	Q At that luncheon, did you meeting with
20	Mr. Zimmerman, well, did you discuss anything else
21	other than this potential investment that he related
22	on the telephone conversation previously?
23	A I think we discussed some Standard Club
94	business.

Did you have any conversations with or

Excerpts from Deposition of Bernard Kroli
communications with anybody else other than Mr. 68
Zimmerman concerning this potential investment
opportunity between the time Mr. Zimmerman called you
and the time you had the lunch with him?

A No.

Q And what was the discussion that you had with Mr. Zimmerman at this luncheon concerning this potential investment opportunity? What did he say to you and what did you say to him?

A He gave me more specific details of the REIT, I think that they had in mind to purchase the stock of a specific REIT.

Q Anything else?

A And he described the terms of the note and the terms of the placement offering, I guess you would call it.

Q What more specific details of the REIT did he describe at that time?

A No, no more specific except, again, that it was selling at a low, low price and it had a high book value.

Q He was talking at that time about one specific REIT?

A Yes, sir.

Q And did he indicate that they -- he or

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He described that it was a one-year note bearing 6 percent interest.

> Q Anything else?

No.

Did he tell you whether or not it would be secured?

At that time he didn't tell me whether or not it would be secured.

Did he -- you said he also described or Q mentioned something as to the terms of the placement offering, what did he say in that respect?

He described that on a one unit investment, A which I believe was \$50,000, that there would be a possibility to invest later, if they were successful in acquiring this particular REIT, that there would be an opportunity for the initial note bearers to buy D-Z stock. He described later on getting a note for \$45,000 of the fifty.

I am sorry, I didn't hear what you said.

Hedescribed later on that there would be an opportunity on the \$50,000 investment that we would get a note for 45,000 of that investment, and that we would get shares in D-Z, possibility that we would.

	m 3370
1	Excerpts from Deposition of Bernard Kroll
1	Q How many shares did he say?
2	A I think at that time he didn't say.
3	Q Well, you said he described later on, what,
4	the package, so to speak, was the 45,000 and the note?
5	A Well, he described
6	Q I am just taking about are you talking about
7	later on in the same evening or are you talking about
8	in the same conversation?
9	A No, in the same meeting, I am sorry, in
10	the same conversation.
11	Q Did Mr. Zimmerman have any documents with
12	him with respect to this potential investment
13	opportunity?
14	A No, sir.
15	Q Did he show you anything at that luncheon?
16	A No, sir.
17	Q Are you quite certain of that?
18	A Yes, sir. Let me qualify the last, to
19	the best of my recollection I didn't see any documents.
20	Q Now, you said that Mr. Zimmerman said
21	there would be a possibility to invest later, if they
22	were successful, there would be an opportunity for
23	the note holders, for the note bearers, to buy D-Z
24	stock. Did he say what the nature of that opportunity

would be? Let me be more specific, did he indicate

A 1461 Excerpts from Deposition of Bernard Kroll

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that the note holders would be -- have an opportunity
to have right of first refusal to buy the stock if the
company floated the stock or --

	A 1462 Excerpts from Deposition of Bernard Kroll
1	A There might be an opportunity. He used
2	the word that there might be an opportunity.
3	Q Did he tell you anything about the nature
4	of this offering that he was contemplating, whether it
5	would be public or private?
6	A No.
7	Q Did you say anything to Mr. Zimmerman
8	well, what did you say to Mr. Zimmerman at that meeting?
9	A I said I was interested.
10	Q Did you question Mr. Zimmerman why you
11	should withdraw the question.
12	Was the amount of the investment that you
13	would make to obtain the note discussed at that luncheon?
14	A Yes, sir.
15	Q Had it been discussed on the prior telephone
16	discussion?
17	A Yes, sir.
18	Q What had he stated in the telephone discus-
19	sion?
20	A He said there would be units of \$50,000
21	each available.
22	Q 'Anything else?
23	A That's all.
24	Q And what did he say at the luncheon?

He said again there would be units of

 $\mathbf{3}$

Q Did you question of Mr. Zimmerman why you should put \$50,000 up for six percent when you could get more elsewhere?

A Yes, sir.

Q What did he respond to that?

A Well, he discussed the -- again, the possibilities of D-Z acquiring enough stock of the REIT and that by doing so, and the stock again was selling at a low book value -- at low value, that in itself D-Z had the management to increase the stock and that, again, we would have the opportunity to buy the stock in D-Z, and at some time D-Z could marge into this particular REIT and, therefore, we would be getting in at a very low selling value as far as the

Q Am I correct in my understanding that your reason for taking a note at only six percent was that you would have the opportunity possibly if this thing panned out to get stock and come in on the ground floor

of D-Z?

A That's right.

stock was concerned.

Q And when you ultimately did purchase these notes, did you do so with the understanding that you would get interest in the company if it was successful?

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Excerpts from Deposition of Bernard Kroll 1 MR. GIBERT: He didn't testify that 2 he would have the opportunity. 3 MR. MARSHALL: I object. You yourself 4 mentioned the possibility of the opportunity when you characterized the answer just before. 5 6 you included the term "possibility." 7 MR. McKENNA: I am asking him a specific 8 question which is not necessarily predicated 9 on any other question. 10 MR. GIBERT: Wait a minute. MR. MARSHALL: It is misleading to the 11 witness to do that. 12 MR. McKENNA: I don't think it is 13 misleading. I think, in fact, it is a fair 14 characterization of what he said, but I'm 15 not predicating it on any characterization. 16 I think the witness is intelligent enough 17 to answer the question on his own. 18 MR. MARSHALL: Sophisticated also. 19 MR. GIBERT: Would you read the 20 question back? 21

MR. McKENNA: I said intelligent enough to answer the question. Farther than that, I will not go at this point in time.

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Excerpts from Deposition of Bernard Kroll

1	(Thereupon, the court reporter read
2	the referred to question.)
3	THE WITNESS: That there would be a
4	possibility that
5	Q (By Mr. McKenna) Was it your understanding
6	based upon what Mr. Zimmerman told you that the units
7	that they were contemplating offering would be offered
8	to the note holders before they would be offered to
9	anybody else?
10	A No.
11	Q But notwithstanding that you went ahead and
12	made the investment at six percent?
13	A Yes, sir.
14	Q Was there anything else discussed at that
15	luncheon that you haven't testified to?
16	A To the best of my recollection, nothing
17	else, except Standard Club business.

1466

Excerpts from Deposition of Bernard Kroll

EXAMINATION

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BY MR. MCKENNA:

Mr. Kroll, in your testimony before we broke relating to your second discussion with Mr. Zimmerman, the one you had over lunch, you referred in several of your answers to D-Z by name. As of that meeting, had Mr. Zimmerman identified the name of the company that was to be formed or had been formed as D-Z?

I don't recall. It could be after the fact, in other words, I know D-Z was formed now and I might have related it back to then.

Q You may be relating it back then to what he told you?

Yeah.

As I understand it, in your first tele-Q phone conversation with Mr. Zimmerman, with respect to this subject matter, I asked you if he had discussed conversion or possible conversion of the notes in that telephone conversation, and you said not at that time. Did he ever discuss possible conversion of the note with you?

At the second meeting.

Q And what dld he discuss about the conversion of the notes at that second meeting?

	Excerpts from Deposition of Bernard Kroll
1	A I thought I answered that question. 78
2	Q You mean when you refer to conversion of
3	the notes, you mean into the units?
4	A Possibility
5	Q Which he referred to?
6	A The units of the 45,000 promissory notes
7	and the stock of D-Z.
8	Q Did he indicate at that time what would be
9	paid for the stock that you would obtain?
10	Λ No. For the remaining excuse me, for
11	the remaining \$5,000?
12	Q Yes.
13	A Yeah, \$5,000, if that answers the question
14	Q Well, did he tell you how many shares you
15	would get for the 5,000?
16	A No, no.
17	Q Now, when was your next discussion with
18	anybody concerning this D-Z Investment Company or
19	the investment opportunity?
20	A It was at the time I was ready to give
21	him my check and when we went over the documents that
22	I signed.
23	Q Now, when you said you went over the
24	documents you signed, what documents were those?

The promissory note and the offering.

Excerpts from Deposition of Bernard Kroll

1	Q You signed I think you previously 7
2	testified that you signed a copy, at least, of Exhibit
3	3, of the document which is entitled "Certificate and
4	Purchase Order," which is Exhibit 3
5	A Right.
6	Q to the private placement memorandum,
7	which is Exhibit 7 on this deposition. Did you sign
8	any other documents at that time?
9	A I signed the note.
10	Q You signed the note itself?
11	A Yes.
12	Q Now, was it at that time well, at that
13	time, did Mr. Zimmerman deliver to you a copy of this
14	private placement memorandum?
15	A Yes, sir.
16	Q This is at the time you actually obtained
17	the note?
18	A Yes, sir.
19	Q And that was at the Mercantile Bank?
20	A Yes, sir.
21	Q On April 30, 1974, the date of the first
22	note?
23	A Yes, that's the date of the first note.
24	It should have been the same date that we were there.

Well, what I'm saying is that the first

	Excer	ots from Deposition of Bernard Kroll
1	time you had	ever seen this document which is or
2	any copy the	ereof, which is the private placement
3	memorandum,	a copy of which is Exhibit 7 to your
4	deposition?	
5	A	Yes, sir.
6	Q	And you said you went over it with him at
7	that time at	the Mercantile Bank?
8	A	I read it.
9	Q	You read it?
10	A	Yes, sir.
11	Q	Did you discuss it with Mr. Zimmerman at
12	that time?	
13	A	Briefly.
14	Q	Did you ask him any questions about it?
15	A	I did, but I don't recall what the questions
16	were.	
17	Q	When did you first advise Mr. Zimmerman
. 18	that you wor	ald make the purchase of the promissory note?
19	A	At our discussion at lunch.
20	Q	This is the second discussion after the
21	telephone ca	all?
22	A	The telephone call was the first discussion.
23	This is the	second.
24	Q	The second was the luncheon?

Yes, sir.

	Excerp	ts from Deposition of Bernard Kroll
1	Q	At the end of that luncheon you told Mr. 81
. 2	Zimmerman,	I take it, that you would buy one of the
3	notes?	
4	A	Yes, sir.
5	Q	Well, did you have any further discussions
6	with Mr. Zi	mmerman after the purchase of the first note
7	A	None that I recall.
8	Q	How did it come about that you purchased
9	the second	
10	A	Well, we had some discussions after I
11	purchased t	he first note.
12	Q	That's what I asked you first.
13	A	Yes, after I purchased the first note.
14	o	Yes.
15	A	We did have some discussions.
16	Q	And when was that?
17	A	Sometime in May, early May.
18	Q	And how did that discussion come about?
19	A	At that time, he gave me the name of the
20	real estate	investment trust that he was interested in.
21	Q	And what was that?
22	A	NJB Prime.
23	Q	Did he tell you whether or not D-Z had
24	already pure	chased shares in NJB Prime at that time?
25	A	No, sir.

	Excerpts from Deposition of Bernard Kroll
1	Q He didn't tell you one thing one way or the
2	other?
3	A I didn't ask him the question so he cidn't
4	tell me anything.
5	Q Okay. Whether or not you asked him the
6	question, he did not tell you?
7	A No, he didn't tell me.
8	Q And what did Mr. Zimmerman say to you in
9	that discussion other than identifying
10	A I told him I was interested in a second unit
11	Q You volunteered that you were interested in
12	a second unit?
13	A Yes. I see Jerome more than on business,
14	so I'm sure we had some casual discussions about it.
15	Q Other than this particular
16	A Other than these particular formal meetings
17	we are talking about.
18	Q Did Mr. Zimmerman well, have you ever
19	discussed this with anybody else besides Mr. Zimmerman,
20	this investment?
21	A Not to the best of my recollection.
22	Q I am putting aside anything you may have
23	discussed with your lawyers in connection with this
24	deposition. Other than that.

Other than the lawyers?

A 1472

Excerpts from Deposition of Bernard Kroll

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1	Q	Yes.
2	A	No.

		A 1473
	Excerp	ts from Deposition of Bernard Kroll
1	Q	Did you ever receive any written information 83
2	concerning D	-Z Investment Company?
3	A	No.
4	Q	Were you ever informed of what well,
5	do you know	who the shareholders are of D-Z Invest-
6	ment Company	??
7	A	They are on the face of
8	Q	If you would like to refresh your recollection
9	by looking a	it the document, I am referring the
10	witness is	looking at Exhibit
11	A	They are on the face of the note, aren't
12	they?	
13	Q	Well, I believe
14	A	Security Management, Zimmerman and Becker,
15	isn't it?	
16	Q	Do you recall offhand?
17		MR. GIBERT: On the face of the private
18	place:	ment memorandum.
19		THE WITNESS: On the face of the private
20	places	ment memorandum.
21	Q	(By Mr. McKenna) That is what I was
22	referring to	o.
23	A	Yeah.

And they are identified as Security

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Q

Management?

1	A Uh-	huh.
2	Q And	Mr. Zimmerman, is that correct?
3	A Uh-	huh.
4	Q Had	you known that prior to receiving the
5	private placeme	nt memorandum, that they would
6	A I k	new that Mr. Davis was involved in it,
7	yes.	
8	Q Do	you know how much Mr. Zimmerman and
9	Security Manage	ment paid for Geir shares for D-Z
10	Investment Comp	any?
11	A Rea	ding either this or the note, it says
12	in there that t	hey both have \$50,000.
13	Q The	y both have \$50,000 in notes you mean?
14	A In	notes, yes, sir.
15	Q Do	you know how much they paid for the
16	shares of comm	on stock?
17	A No,	sir.
18	Q You	do not know?
19	A No,	sir.

* * *

Excerpts from Deposition of Bernard Kroll

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Q (By Mr. McKenna) Have you ever received from D-Z or anybody acting on behalf of D-Z any annual reports, prospectuses, financial statements, or other reports containing financial information about NJB Prime?

A No, sir.

Q Have you ever received any financial reports balance sheets, pro forma statements of financial condition of Security Management Company, Inc.?

A No. sir.

Q Did there come a time when you became aware of what would be the purchase price of the units of stock that would be made available by D-Z if it went through with its issuance of the package which you previously referred to?

A There is some reference to that, I believe, in the offcring, and that's the only thing we ever -- I ever had from D-Z.

Q Did you read that particular provision which relates to that subject matter when you received the offering memorandum?

A Yes, sir, I think it calls for four shares.

. 11	Excerpts from Deposition of Bernard Kroll
1	Q Four shares at what price? 91
2	A \$100.
3	Q Would you look at Exhibit 7, and in
4	particular, page seven and eight, and I ask if that
5	refreshes your recollection as to what the purchase
6	price would be of the shares of stock?
7	A Of the \$5,000 allocated to the four shares
8	of \$100 par value common stock, \$400 will be allocated
9	to the capital stock and \$4600 to capital surplus.
10	Q What would be the purchase price of the
11	share?
12	A Would be \$100 each.
13	Q Your understanding of the purchase price
14	was \$100 value because the par value was \$100?
15	A I would assume.
16	Q And did you understand that the \$5,000
17	of the purchase price would be allocated to the stock -
18	\$5,000 of the \$50,000 purchase price would be allocated
19	to the stock of which \$100
20	A It says \$4600 to capital surplus.
21	Q Yes, but what would the \$4600 have been
22	expended for?
23	A Well, I would assume
24	Q You are saying that is what it goes into.

I didn't ask the question.

Δ 1477

line is	Excerpts from Deposition of Bernard Kroll
1	Q Did you understand that? 92
2	A I understood what I read.
3	Q Did you understand that you would be paying
4	that if you purchased one of these units, when and if
5	offered, you would be paying \$5,000 \$50,000 for the
6	\$45,000 in principal amount of two year promissory
7	notes and for four shares of D-Z stock?
8	A Yes.
9	Q Were you ever informed in whatever manner,
10	shape or form that in order to obtain control of the
11	REIT which D-Z was interested in it might wage a proxy
12	contest?
13	A There was some conversation to that.
14	Q And with whom did you have that conversation
1 5	A With Mr. Zimmerman.
16	Q Do you recall when it was?
17	A No, sir.
18	Q Do you recall what the conversation was?
19	A No, it was on a the terms of purchasing
20	the stock and what the possibilities were.
21	Q Do you recall in which conversation it was
22	of the ones you have related?
23	A No, sir, but it was in May.
24	Q It was in May?
95	A Sometime between the time I purchased the

	Excerpts from Deposition of Bernard Kroll
1	first unit and the second unit.
2	Q And that Mr. Zimmerman mentioned there
3	might be a proxy contest?
4	A No, it was in general discussions about
5	purchasing the stock. I don't say he specifically
6	said there might be a proxy fight, but just in general
7	conversation regarding taking over the stock.
8	Q But in the course of that conversation, did
9	he mention a possible proxy contest?
10	A Yes, yes.
11	Q Is that the first you recall hearing there
12	might be a proxy possible proxy contest waged by
13	D-Z?
14	A Yes, sir.
15	Q Were you ever informed as to the amount in
16	terms of number of shares or of percentage of the
17	outstanding shares of the REIT that D-Z was interested
18	in, that D-Z intended to obtain?
19	A In the neighborhood of 20 percent.
20	Q And when were you informed of that?
21	A Again, sometime in early May.
22	Q After you purchased the first note and
23	before you purchased the second?
24	A Yes.

And how did you learn that?

Q

1	Excerpts from Deposition of Bernard Kroll A In a conversation with Jerome Zimme man
2	
3	Q And did Mr. Zimmerman inform you as to the
	reason why they were interested in acquiring 20 percent
4	A I'm not sure he informed me specifically
5	of the reason.
6	Q Did he inform you in any other way?
7	A In general terms of being able to no,
8	I don't remember. I might be saying sumething I don't
9	remember. I really don't.
10	Q Were you ever informed by anybody that D-Z
11	was interested in soliciting proxies or consents to
12	call a special meeting of shareholders as opposed to
13	the annual meeting of shareholders?
14	A Yes, sir, I was.
1 5	Q And when were you informed of that?
16	A I don't remember. I remember it happened,
17	but I don't remember when.
18	Q Was it after you purchased the second note?
19	A Yes.
20	Q Do you when the annual meeting of NJB Prime
21	was held?
22	A I don't remember the specific date. 1
23	recall reading about it, the annual meeting in the Wall
24	Street Journal.

Do you recall whether or not the information

Q

	7 1100
	Excerpts from Deposition of Bernard Kroll
1	that you did obtain about D-Z seeking consents to call
2	the special meeting was after you learned about the
3	annual meeting of NJB having been held?
4	A No
5	MR. MARSHALL: I am objecting to the
6	form of your question. I don't know that
7	the testimony has been such that D-Z was
8	seeking consents or sought consents to a
9	special meeting. You asked him
10	MR. McKENNA: I asked him if they
11	were interested. I'll amend the question.
12	THE WITNESS: Yes, I had learned that
13	they were interested in calling a special
14	meeting.
15	Q (By Mr. McKenna) Was this after you were
16	aware that the annual meeting had already been held?
17	A No, it was before.
18	Q Before?
19	A Before the annual meeting.
20	Q Do you know how much before?
21	A No, I really don't. No, I don't.
22	Q And what specifically were you informed of
23	with respect to that?
24	A That they had hoped to acquire enough shares

to make it advantageous to call a special meeting.

	Excerpts from Deposition of Berlard Kroll
1	Q Well, what I asked you, whether they were
2	interested in soliciting proxies or consents of other
3	shareholders. I didn't use the word "other shareholders
4	but I assumed you understood that, other than them elves
5	Did you so understand me?
6	MR. MARSHALL: I am objecting
7	MR. McKENNA: I'm asking the witness
8	if he so understood my question.
9	MR. MARSHALL: Why don't you ask him
10	what was said as opposed to whether they
11	were interested?
12	MR. McKENNA: I will ask my own
13	questions.
14	MR. MARSHALL: I'm objecting to the
15	form of the question, Mr. McKenna.
16	MR. McKENNA: Fine. You have your
17	objection.
18	Did you understand that when I
19	questioned you about what you had been
20	informed as to their interest in soliciting
21	proxies or consents to call a special
22	meeting, I meant proxies of other share-
23	holders?

(By Mr. McKenna) Did you understand that Q

THE WITNESS: No, sir, I didn't.

24

•	
1	D-Z was at any time interested in soliciting its own
2	proxy or consents to call a special meeting?
3	MR. MARSHALL: I'm sorry, I don't
4	understand the question.
5	MR. McKENNA: I don't understand
6	the witness' answer. I have never heard
7	of anybody soliciting anybody other than
8	a shareholder.

Excerpts from Deposition of Bernard Kroll 1 98 MR. MARSHALL: I submit to you your 2 question is possibly misleading and that 3 is maybe why the witness is confused. 4 MR. McKEMMA: No, I don't think it 5 The witness may be confused, but not 6 because of the questions. 7 MR. GIBERT: Now, I will ask that be stricken and ask Mr. McKenna not to make 8 9 that remark. 10 MR. McKENNA: Well, I am sorry. Mr. Marshall made a remark and 1 intend to 11 defend myself from such accusations and 12 you have the right to defend the witness. 13 I didn't mean to impune the witness. 14 MR. GIBERT: Thank you. 15 MR. McKENNA: Only to defend myself. 16 MR. GIBERT: Fine. 17 Q (By Mr. McKenna) Tell me everything that 18 you have ever been told or informed as to any activity 19 of D-Z in the area of solicitation of proxies or 20 consents for the recall of a meeting of NJB Prime. 21 MR. MARSHALL: Can we have some time 22 period? 23 (By Mr. McKenna) Yes, sir, anything, any 24

time that he has been told, whenever he learned that.

I was also told they raised roughly

600,000. I was also told that they had about a hundred

and twenty thousand shares.

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Excerpts from Deposition of Bernard Kroll

Q	Of	NJB	Prime?

Q OL NOB Frime

- A NJB Prime, roughly, and a hundred thousand --
- Q When were you told that?

Well, within this broad period of time you are speaking of. I can't be specific because I don't remember.

Q Okay. Go ahead.

A I was told they were trying to call a special meeting of the stockholders. I was told -- not specifically, but they failed to call a special meeting. I was told that they might attend the meeting of NJB Prime.

Q You are referring now to the annual one?

A Referring now to the annual meeting.

I don't know what happened at the annual meeting,
what I read in the Wall Street Journal, I didn't ask
what happened at the annual meeting. Since that
period of time I understand no further stock has
been purchased. I don't know that to be a fact.

I understand. Now, are we talking specifically rather
than to D-Z and NJB?

- Q D-Z or anybody acting on its behalf.
- A Uh-huh, and really that's all.
- Q Now, you say you were told or you -- that no further stock had been purchased, am I correct, I

may --

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A I am not sure who told me. I have understood that no further stock, but I have said I am not sure.

Q Now, you said since that time, were you referring to the time that you learned that they purchased 120,000 shares?

A The time that -- that's right, that's right.

Q Do you know now whether or not any further stock is being purchased by D-Z, any further stock of NJB?

A No, sir, I don't know.

Q Now, all of these things that you say you have been told about soliciting proxies or consents, were they told you by Mr. Zimmerman?

A They might have been told to me by Mr. Zimmerman and might have been told to me by Mr. Davis.

MR. MARSHALL: Excuse me. I think it's clear, Mr. McKenna, from the answer, that points that the witness just mentioned do not all refer to soliciting proxies or consents. So that to characterize them as such, I believe is inappropriate. I think what the witness was doing, and I am sure either he or his counsel will correct

Δ 1487

me if I am wrong, was indicating to you various things which he learned during the broad period you indicated or requested.

I did not understand them to refer to the solicitation of proxies. Certainly when he said that, he was advised that they didn't raise a million two hundred fifty thousand, I don't know how that relates to solicitation of a proxy or consent to a special meeting, so I am just objecting to the manner in which you characterized your last question.

MR. McKENNA: My question was all the things he had been told about solicitation of proxies or consents. I assume that the witness understands that.

Q (By Mr. McKenna) Are you aware now of whether or not D-Z is attempting to solicit proxies or consents to call of a special meeting of NJB Prime?

A No, sir.

Q Do you know who, other than yourself, purchased the 6 percent promissory notes of D-Z?

A As of right now?

Q As of right now.

A Yes, sir, I do.

	Excerpts from Deposition of Bernard Kroll
1	Q What is your source for that information,
2	and if it is different as to different people, tell
3	me.
4	A No, it is on the subpoena.
5	Q On the subpoena, is that your source of
6	the information?
7	A I didn't know who they were.
8	Q You didn't know who they were until you
9	were served with the subpoena?
10	A I knew of only one, other than the names
11	that are on that subpoena.
12	Q Now, when you refer to the subpoena, I
13	assume you are referring to notice of deposition,
14	which is attached thereto, which lists the names?
15	A That's right.
16	Q Of Dr. Levin, yourself, Max Sophier, Harvey
17	Jacobson and Seymour Weinberg?
18	A That's right.
19	Q You say you knew of someone other than
20	those listed here?
21	A No, I knew of one prior to the receipt of
22	the subpoens.
23	Q Who did you know?
24	A Harvey Jacobson.
25	Q How did you know Mr. Jacobson?

	A 1403
	Excerpts from Deposition of Bernard Kroll
1	A I think Mr. Zimmerman mentioned his name
2	to me.
3	Q Now, you also were aware that Mr. Zimmerman
4	and Mr. Davis and/or Security Management had purchased
5	
6	notes, were you not?
	A Oh, yes, yes.
7	Q That you were aware of because Mr. Zimmerman
8	had told you, I take it?
9	A No, I believe it is in the it is in the
10	offering or it states so in the offering of the note.
11	Q All right. Did you ever discuss with
12	anybody else, other than those whom you know to have
13	purchased the 6 percent promissory notes, this
14	investment opportunity?
15	A Yes, I do.
16	Q Who did you discuss it with?
17	A Some personal friends of mine.
18	Q And who are they?
19	A I don't there were three or four that
20	have mentioned it to me, but I don't really specifically -
21	I would say a Mr. Mark Rottner.
22	Q How would you spell that?
23	A R-o-t-t-n-e-r, and Dr. Socoloff.
24	Q Spell it.

S-o-1-o- -- S-o-c-o-1-o-f-f. My dad,

	Excerpts from Deposition of Bernard Kroll
1	Mr. Harry R. Kroll.
2	Q Anybody else?
3	A My attorney, my other attorney.
4	Q Who is your other attorney?
5	A Mr. Harry Howard.
6	Q Does he have a firm?
7	A King and Spalding.
8	Q Anybody else?
9	A There might have been others, I don't
10	remember.
11	Q Now, was your discussion with these various
12	people basically the same or different?
13	MR. GIBERT: I object to that.
14	Q (By Mr. McKenna) I am saying was the
15	discussion basically the same with each of them or
16	did it vary?
17	A I don't remember.
18	Q How did your discussion with Mr. Rottner
19	come about?
20	A He is a personal friend of mine.
21	Q Well, did you mention to him that this
22	opportunity was available or did he mention to you
23	that he had been approached by somebody else?
24	A No, I just discussed a note that I had

bought with him, just like he discusses with me what

Δ 1491

	A 1701
1	Excerpts from Deposition of Bernard Kroll 106
l	he does.
2	Q Was there any discussion as to whether
3	or not be wight want to participate?
4	A Not specifically.
5	Q And Dr. Socoloff, how did it come up with
6	Dr. Socoloff?
7	A About the same thing.
8	Q And your father?
9	A About the same thing.
10	Q And your attorney, Mr. Howard?
11	A I just discussed a little more specifically
12	about the terms of the
13	Q Did you discuss it with him before
14	or after you had purchased the notes?
15	A After I purchased the notes.
16	Q After you purchased both of them?
17	A After I purchased both of them.
18	Q Did any of these gentlemen show an
19	interest in purchasing the notes or
20	A Not to the best of my knowledge.
21	Q Or participating? Did any of them indicate
22	that they had been purchased by Mr. Zimmerman or anybod
23	else about purchasing notes of D-Z?
24	A I don't know. No, they didn't tell me if
25	he did. * * *

Excerpts from Deposition of Bernard Kroll

MR. GIDERT: Mr. McKenna, at the adjournment of the deposition. I had a conversation with Mr. Kroll because I believed that his answers to one or two of your questions toward the end were probably misleading, either he misunderstood your questions or apparently, because he testified in respect to your questions concerning whether any of those persons he named, Harry Howard, Socoloff, whatever the names were, expressed any interest in participating, and as I recall, he said no. And I put you on notice that I believe the answer -- the question was misunderstood and the answer was misleading. Now, if you would like for us, Mr. Kroll left, but his office is in Colony Square, which while not right in the immediate downtown area, is how far away, Jarvis?

MR. LEVISON: Three or four miles.

MR. GIBERT: If you want us to call and get him back so that you may pick up that line of inquiry, we will do so, or if you want to do that the resumption otherwise.

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Excerpts from Deposition of Bernard Kroll

MR. McKENNA: Is it possible to get him back for a short time this afternoon and maybe when we break here with this gentleman -- I hate to leave a record which anybody believes is unclear to some future date, which we may all forget to pick up the questions, and if we -- and I think that maybe the best thing to do is to have him come in maybe for just a few minutes.

MR. GIBERT: Well, I will -- I beg your pardon?

MR. PARKER: Especially if the discovery may be halted by it.

MR. GIBERT: I think it is only fair to say, in my opinion, the answers were misleading, apparently the questions were misunderstood, and for that reason I would pass the question to Jarvis, who may have some acquaintance with Mr. Kroll's activities of getting him back, if that is your desire.

MR. McKENNA: I would ask you this, and realize you are not obligated to answer it, of course, but has Mr. Kroll so indicated to you that his answer was -- he had not

Excerpts from Deposition of Bernard Kroll

meant to --

MR. GIEERT: I had discussed with Mr. Kroll naturally the coming deposition, and so I -- based upon that, on that prior discussions and on the fact that followed it up after the deposition that just adjourned, I believe that his answer was misleading.

MR. LEVISON: Why don't I call his office. He may not be back there yet, but have him call as soon as he arrives and see if he can't return.

Excerpts from Deposition of Bernard Kroll

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YOLK

D-Z INVESTMENT COMPANY, Plaintiff, CIVIL ACTION vs. ROBERT E. HOLLOWAY, MELVIN NO. 74 Civ. 2379 S. TAUB, MAURICE J. BRICK. (IBW) PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and NJB PRIME INVESTORS, Defendants.

Continuation of the deposition of MR. BERNARD KROLL, taken by the Defendants, pursuant to notice and subpoena and the Federal Rules of Civil Precedure, before Forrest M. Brown and Stuart S. Huseby, Court Reporters and Notaries Public, at 2700 First National Bank Tower, Atlanta, Georgia, on the 19th day of July, 1974, commencing at the hour of 4:30, p.m.

Δ 1496

Excerpts from Deposition of Bernard Kroll

question to the witness then.

MR. McKENNA: I will put a new

Q (By Mr. McKenna) Mr. Kroll, let me put to you a new question, which I hope, in essence, is the same as the other one, but without misleading you, did you discuss with any of the persons whom you have identified that you did have some discussion -- I am sorry, I withdraw the question.

MR. GIBERT: Excuse me. Forrest, do you have an indication on the record that he has been called back pursuant to that conversation and so forth? This is two hours later in the day or something of the sort?

MR. McKENNA: Okay, fine.

MR. GIBERT: And he is called back for the purpose of clarifying previous testimony.

MR. McKENNA: Fine.

Q (By Mr. McKenna) Mr. Kroll, as I recollect your testimony, you had indicated that you had discussed the investment opportunity that was presented with respect to D-Z with a number of personal friends, including a Mr. Mark Rottner, a Dr. Socoloff, your father, Harry Kroll, and your attorney, Mr. Harry

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	Excerpts from Deposition of Bernard Kroll
1	Howard. And I asked you whether, in your discussion
2	with them, any of those gentlemen had indicated an
3	interest in participating in the investment presented
4	by D-Z.
5	A They did.
6	Q And which of those gentlemen expressed such
7	an interest?
8	A Mark Rottner and Dr. Maurice Socoloff.
9	Q And what did they say to you and what did
10	you say to them on that subject? Well, if it was the
11	same, was it basically the same or was it different?
12	A It was basically the same.
13	
14	Q Okay. Then, if it was the same, would
	you tell me what you said to them and what they said
15	to you or vice-versa?
16	A This was after the purchase of the first not
17	by me.
18	Q And before the second?
19	A And before the second.
20	Q Go ahead.
21	A That they were I just explained to them
22	the investment opportunity that I thought was there.
23	Q You explained to them that you thought it
24	was a good opportunity for them to participate in?

Uh-huh.

	Excerpts from Deposition of Bernard Kroll
1	Q And did you explain that to the other 120
2	gentlemen as well, your father and your attorney as
3	well?
4	A Not to the extent that I explained it to
5	these two gentlemen.
6	Q And did they express an interest in
7	these two gentlemen being Mr. Rottner and Dr. Socoloff
8	express an interest in participating?
9	A Yes, sir.
10	
11	Q Do you know if they ever followed up that
	interest?
12	A Yes, sir.
13	Q And do you know if they have an intention
14	to participate, to make an investment?
15	A Yes, sir.
16	Q And what is have they expressed that
17	intention to you?
18	A Yes, sir.
19	Q And when did Mr. Rottner express that
20	intention to you?
21	A Again, prior to the purchasing of the
22	second note.
23	Q And the same is true with Dr. Socoloff?
24	A Yes, sir.
44	1,

And have they since expressed any change

A 1499 Excerpts from Deposition of Bernard Kroll

1	of heart in this respect?
2	A No, sir.
3	Q Do you know if they still intend to make
4	such an investment?
5	MR. GIBERT: If they intend to make
6	such if they still intend as of today?
7	MR. McKENNA: Yes.
8	MR. LEVISON: I am not sure the question
9	is really that clear.
10	Q (By Mr. McKenna) Do you know if they
11	I withdraw the question.
12	Do you know if, in fact, either Mr. Rottner
13	or Dr. Socoloff has, indeed, purchased any notes of
14	D-Z Investment Company?
15	A They have not themselves purchased any.
16	Q Have they purchased them through any other
17	entity in which they have an interest?
18	A Yes, sir.

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	A 1000
Exc.	erpts from Deposition of Bernard Kroll And could you identify those entities,
entity or	•
T.	Yes, they expressed an interest in in
A	
	lves purchasing the note, but in acquiring
some of mi	ne.
Q	And did you agree to permit them to acquire
some of your interest in the note?	
A	Yes, sir.
Q	And does that agreement still stand as of
this momen	t?
A	Yes, sir.
Q	That they will be able to purchase a
participation in your note?	
A	Yes, sir.
Q	And has a closing date been scheduled for
them to co	nsummate this participation?
A ,	It has already been consummated.
Q	And when was that?
A	Sometime after the purchase of the second
note. I'm	not sure of the date.
Q	And how much of a participation how much
of an interest did they purchase from you?	
A	Specifically?
Q	Yes.
·	

Dr. Socoloff has taken a half. Mark Rottner

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Excerpts from Deposition of Bernard Kroll

1 has taken -- I'd have to check it again, but I think 2 it's twelve and a half percent. I've got the rest. 3 You said Dr. Socoloff has taken a half. 4 You mean a half of the \$100,000? 5 That's right. Has he taken that interest on the same 6 Q terms that you received the original interest? 7 8 A Yes, sir. And that is also true with Mr. Rottner? Q 9 Yes, sir. A 10 Did you ever discuss the arrangement Q 11 between yourself and these two gentlemen to participate 12 in your interest, in the D-Z Investment with Mr. Zimmerman? 13 A No. 14 Q Did you ever discuss it with Mr. Davis? 15 No. 16 With Mr. Becker? Q 17 No. 18 With anybody that you know to be associated Q 19 with or affiliated with D-Z? 20 No. 21 Did Mr. Zimmerman or anyone else you know Q 22 to be associated or affiliated with D-Z ever advise 23 you that you should not solicit other persons to 24

participate in the investment or otherwise permit other

Excerpts from Deposition of Bernard Kroll
persons to participate in -- I withdraw the question, 124
it is objectionable as to form.

Did Mr. Zimmerman or anybody else ever advise you that you should not discuss the opportunity, this investment opportunity, with other persons in a manner which would indicate to them that it could be made available to them?

A No.

Q Do you recall ever having been informed or advised that you should not agree to permit others to participate in your personal investment in D-Z Investment Company?

A Would you repeat that?

Q Do you recall ever having been advised that you should not permit other individuals or persons to obtain an interest or participation in your investment?

A Yes, sir.

Q And by whom were you so advised?

A Mr. Zimmerman.

Q And when did he so advise you?

A I don't remember.

MR. MARSHALL: May I have that last question and answer read back, please?

(Thereupon, the court reporter read

1	the referred to question and answer.)
2	Q (By Mr. McKenna) Do you remember whether
3	it was before or after you purchased
4	A It was sometime after the first note.
5	Q Was it before or after you reached an
6	agreement with these gentlemen to allow them to partici-
7	pate?
8	A It was before I reached the agreement.
9	Q This may be repetitious.
10	MR. MARSHALL: I understand.
11	Q (By Mr. McKenna) Have you ever advised Mr.
12	Zimmerman of the fact of your agreement to allow these
13	gentlemen to participate?
14	A No.

* *

EXCERPTS FROM DEPOSITION OF MAX SOPHIER

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY, Plaintiff,))
vs.) CIVIL ACTION
ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, MORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and NJB PRIME INVESTORS, Defendants.	No. 74 Civ. 2379) (IBW)))

Deposition of MR. MAX SOPHIER, taken by the Defendants, pursuant to notice and subpoena and the Federal Rules of Civil Procedure, before Forrest M. Brown and Stuart S. Huseby, Court Reporters and Notaries Public, at 2700 First National Bank Tower, Atlanta, Georgia, on the 19th day of July, 1974, commencing at the hour of 2:45, p.m.

1 APPEARANCES OF COUNSEL: 2 For the Plaintiff: STEPHEN A. MARSHALL, Lsq. 3 For the Individual Defendants: PETER D. McKENNA, Esq. 4 For Security Manage-5 ment and Ralph Becker: S. ALAN COHN, Esq. 6 For the Defendant DAVID PARKER, Esq. NJB Prime Investors: 7 For the Deponent: 8 S. JARVIN LEVISON, Esq. HUGH W. GIBERT, Esq. 9 DAVID ROSS, Esq. 10 IT IS HEREBY STIPULATED AND AGREED, 11 by and between the attorneys for the 12 respective parties hereto that filing, 13 sealing and certification be and the 14 same are hereby waived. 15 IT IS FURTHER STIPULATED AND AGREED 16 that all objections, except as to the form 17 of the question, shall be reserved to the 18 time of trial. 19 IT IS FURTHER STIPULATED AND AGREED 20 21

that the within examination may be subscribed and sworn to before any notary public with the same force and effect as though subscribed and sworn to before this Court.

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Excerpts from Deposition of Max Sophier

1		MAX SOPHIER,
2	being firs	t duly sworn, was examined and deposed as
3	follows:	•
4		EXAMINATION
5	BY MR. McK	ENNA:
6	Q	What is your full name, sir?
7	A	Max Sophier.
8	Q	And what is your present residence address?
9	A	2575 Peachtree Road, Northeast.
10	Q	Atlanta?
11	A	Atlanta, Georgia.
12	Q	And do you have a business address in
13	Atlanta?	
14	A	Correct.
15	Q	What is that?
16	A	440 Englewood, spelled with an "E,"
17	Englewood A	Avenue, Southeast, Atlanta.
18	Q	And what is your occupation?
19	A	I am President of the Salvatori Corporation.
20	Q	Spell that.
21	A	S-a-l-v-a-t-o-r-i, Salvatori Corporation.
22	Q	And what is that business?
23	A	Manufacture men's leather wear such as
24	belts, wall	lets and et cetera.
25	Q	Is that here in Atlanta?

Δ 1507

Excerpts from Deposition of Max Sophier

	Excerpts from Deposition of Man Deposit
1	A Correct. 4
2	Q Did there come a time when you purchased
3	a note or notes of D-Z Investment Company?
4	A Did there come a time? You mean did I loan
5	any money to D-Z Investment Company?
6	Q If you want to put it in those words.
7	A I did, yes, sir.
8	Q And when was that?
9	A I believe it was in May, sometime.
10	Q And do you have those notes with you? Well,
11	was there one or more notes? I'll withdraw the question
12	for the moment.
13	You testified that you loaned money to D-Z
14	Investment Company. Did you receive a note as evidence
15	of the obligation of that loan?
16	A I did.
17	Q Was there one or more notes that you received
18	A No, just that one.
19	Q And do you have that note with you?
20	A Yes.
21	Q May I ask that it be produced, and may I
22	ask at the same time, why don't we just
23	MR. GIBERT: You may ask.
24	MR. McKENNA: At the same time, for
	all documents called for, why don't we

Excerpts from Deposition of Max Sophier

MR. McKENNA: Mr. Reporter, I would like to mark for identification the following exhibits: Exhibit 16 for identification on the deposition of Mr. Sophier is a copy which we have agreed is a true copy of the promissory note, the letterhead of D-Z Investment Company, or I should say entitled D-Z Investment Company, six percent promissory note, due March 31, 1975. The principal amount of \$50,000, and it is dated 30 April 1974, and indicated to be issued to the order of Max Sophier.

Exhibit 17 for identification is a copy of the document dated April 24, 1974, and entitled D-Z Investment Company, private placement memorandum, and containing as a part thereof, or annexed thereto, an Exhibit 1 of two pages, an Exhibit 2, entitled D-Z Investment Company, six percent promissory note, due March 31, 1975, which appears to be a copy of a note in blank of some seven pages; and Exhibit 3 entitled Certificate and Purchase Order with a blank date, addressed to D-Z Investment Company and containing some eight pages.

Excerpts from Deposition of Max Sophier

Exhibit 18 is a letter of July 10th,
1974, on the letterhead of Wachtell, Lipton,
Rosen and Katz, addressed to Mr. Max Sophier,
and I'd like to mark as Exhibit 18A, a copy
of an order to show cause with stay dated
July 9, 1974, which appears to be a document
that is referred to as enclosed with Exhibit
18.

(Thereupon, the court reporter marked Exhibits 16, 17, 18 and 18A to the deposition of Mr. Sophier for identification.)

25 +

25 * * *

Q (By Mr. McKenna) Mr. Sophier, I put before you a copy of the note which has been marked Exhibit 16 for identification on your deposition, and which is dated 30 April, 1974, and ask you if you can identify that?

A If I can identify it, you mean --

Q Is that a note that you purchased from D-Z Investment Company, is that a copy of the note

	Excerpts from Deposition of Max Sophier
1	that you purchased from D-Z Investment Company?
2	A I don't think well, I bought an investment
3	in the company and therefore
4	Q Well, is that a copy of the note that you
5	received from D-Z Investment Company in return for
6	the monies you advanced to D-Z Investment Company?
7	A Yes, that is.
8	Q And on what date did you receive that note?
9	A What date, April 30th, I presume.
10	Q Well, when you say you presume, why do
11	you presume?
12	A It is listed on here April 30th, isn't it?
13	Q Do you have a recollection that you
14	received the note on the same date that it bears?
15	A I really don't recollect, and I would
16	probably
17	Q Do you have any reason to believe it was
18	on any other date than the date as set forth on the
19	note, namely, April the 30th?
20	A Shouldn't have been if that is the date
21	on it.
22	Q You have no reason to believe it is on
23	any other day?
4	A No.

Where did you receive that note?

Q

Excerpts from Deposition of Max Sophier

1	A	I believe I received it in my office. 27
2	, Q	And who did you receive it from or how did
3	you receive	it?
4	A	Gosh, I really don't know, to tell you the
5	truth, I don	n't recollect. How did I receive it?
6	Q	Was it delivered to you personally, did you
7	get it in th	ne mail?
8	A	I received it personally.
9	Q	Do you recall who delivered it to you?
10	A	Mr. Zimmerman.
11	Q	Was anybody else present when Mr. Zimmerman
12	delivered i	t to you?
13	A	No.

* * *

33 * * *

14	Q When did you first hear of the opportunity
15	or availability of the investment which is signified
16	by the note which you acquired from D-Z in return for
17	your \$50,000 which you advanced to them?
18	A I don't recall the time prior to consummation
19	I just probably maybe two, three, four weeks prior
20	to. Just a briefing on the phone to set up the date.
21	Nothing was mentioned in regard to what the project at
22	that time was. Just a setting up of an appointment to
23	come in and talk to me.
24	Q Telephone conversation with somebody?
05	A With Jerome.

(Witness shakes head negatively.)

MR. GIBERT: You have to speak up.

24

Did he say what he wanted to see you about?

Yes, on some business.

Q

24

1515 Excerpts from Deposition of Max Sophier 1 Did he say he had an investment opportunity 2 he wanted to see you about? 3 I don't know the words he used, but he did mention something in the area of a deal, put it that 4 way. I don't know the exact words he would have used. 5 6 You can't pin me down to what words he might have said. Did he discuss the nature of the deal at all? 7 Q 8 No, not on the phone. Did he discuss the amount of money that --9 Q No. A 10 -- you might be invited to invest? Q 11 No. A 12 Excuse me? Q 13 A No. 14 MR. GIBERT: Let him finish the 15 question. 16 MR. McKENNA: I am a slow thinker 17 and I formulate my questions slowly. 18 THE WITNESS: I happen to be a fast 19 thinker, and so I sort of projected what 20 you are going to say. 21 MR. GIBERT: These fellows from New 22 York talk too slowly, Mr. Sophier. 23

THE WITNESS: Usually don't though,

do they? Usually are pretty fast.

24

	Excerpts from Deposition of Max Sophier
1	Q (By Mr. McKenna) How long after that 37
2	telephone conversation did you have the meeting with
3	Mr. Zimmerman that you have cestified about?
4	A It had to be within a period of 30 days,
5	I assume.
6	Q Can you fix it, the meeting, in relation to
7	the date of April 30th, which appears on the note?
8	A Well, possibly early April.
9	MR. GIBERT: Mr. Sophier, let me
10	just
11	THE WITNESS: I say sometime in
12	April.
13	MR. GIBERT: Let me say to you, Mr.
14	Sophier, while I want you to give him your
15	best recollection, I do not want you to
16	guess, and as much as Mr. McKenna if he
17	seems to be inviting you to guess, you
18	should not. Now, I think
19	THE WITNESS: Then my answer is I
20	do not recollect. I can't pin it down.
21	Q (By Mr. McKenna) Can you give me what
22	is your recollection of what the date was, or how far
23	in advance of April 30 was it?
1	A I can't tell that to you.

Can you tell me whether it was a matter of

24

Q

Excerpts from Deposition of Max Sophier

weeks or days?

2 A No, can't tell you that either.

Q Do you recall having more than one discussion with Mr. Zimmerman between the time of the meeting in your office and the time that you actually acquired the note when he delivered it to you in your office?

A You talking about --

MR. GIBERT: Excuse me.

MR. McKENNA: I'm talking about more than one discussion about the subject matter.

THE WITNESS: In my office?

MR. McKENNA: At any time or place.

MR. GIBERT: Hold on. If I may, I object to the form of that because my understanding is the testimony has been a telephone call set up a meeting, and then the only other evidence is that he received the note later. Now, you have referred to more than one, and there hasn't even been any testimony that there was one.

MR. McKENNA: He testified that there was a telephone conversation to set up an appointment, which he had in his office. He also indicated that the meeting in his office

may have been, I think, as much as, he said, thirty days prior to the date Mr. Zimmerman delivered this note to him, which indicates to me there was a meeting, at least one meeting, in between the telephone conversation and the day he delivered the note.

MR. GIBERT: I understand that. But the question you just asked him was, was there more than one meeting between the time the meeting was arranged by the phone call and the meeting at which the note was delivered.

MR. McKENNA: If that was my question, I did not intend that, and I will rephrase it rather than go back on it.

My question is, between the first meeting that you had with Mr. Zimmerman that you have testified about in your office, and the meeting at which he delivered the note to you for your check, did you have any further discussions with Mr. Zimmerman with respect to the subject matter of the note or investment?

THE WITNESS: No.

Q (By Mr. McKenna) No discussions whatsoever

Excerpts from Deposition of Max Sophier

1	either at a	meeting or by telephone or otherwise? 40
2	A	No.
3	Q	Now, the meeting that was held at your
4	office, did	you make any notes or memoranda of that
5	meeting? I	'm talking about the meeting before you
6	purchased t	he note, not after you acquired
7	. · . A	No, I did not.
8	Q	Did you notice if Mr. Zimmerman made any
9	notes?	
10	A	No, I do not know.
11	Q	At that meeting, did you discuss anything
12	other than	the potentiality of your making an investment
13	or purchasi	ng some notes in this new company that Mr.
14	Zimmerman w	as forming?
15	A	At the original meeting you refer to?
16	Q	At the first meeting.
17	A	Now, what was your question? Could you
18	repeat it?	
19		MR. GIBERT: Can we stop and read
20	it ba	ck when I get through? I have a
21	phone	call.
,		(Thereupon, there was a brief recess.)

was read by the reporter.)

A The topic of conversation was relative to the details as outlined in this Exhibit, whatever this Exhibit is.

(A part of the witness' testimony

Q You have a note in front of you, are you sure you mean that Exhibit or do you mean another one?

MR. GIBERT: No, you mean this one.

THE WITNESS: No, this one here.

Q (By Mr. McKenna) You mean the note?

A Well, the note is -- the first meeting was to explain what Jerome had in mind in regards to --

Q May I interrupt him?

A In regards to going into a deal.

Q Rather than generalizing, why don't you tell me what Mr. Zimmerman said to you and what you said to him at that meeting, to the best of your recollection, in words or substance.

A To the best of my recollection it was that Jerome advised that he was forming a group and that this group was going to form a corporation in Delaware under the name of D-Z, and that their -- the purpose of this group was that they would buy stock in a corporation that was on the American Stock Exchange, but at that time he did not divulge the name

of the corporation that he had -- or they had in mind.

If he could put together the group, that he had hoped to put together, put it that way, and he invited myself to be one of the individuals who would be loaning this new corporation the amount of \$50,000, and we chit-chatted in regards to the high side and the low side and what benefits we could derive from coming in on this new venture, and with our association over the years, we have always had the fullest respect and confidence for Mr. Zimmerman --

Q Is that something that was expressed at the meeting?

A I don't think so, no, sir, I am saying something that's --

Q Well, I move to strike the last comment as to the association and confidence.

A Well, I just bring it out because we wouldn't go into any investment or any borrowing -- loaning anybody any money if we didn't have the fullest confidence and respect.

Q Was it based upon your confidence and respect of Mr. Zimmerman that you made the investment?

A Yes.

I am sure --

MR. GIBERT: I would object to that,

1 MR. McKENNA: Well, the witness has 2 told me that it was -- it was gratuitous, 3 but I figured since he made it, I might as 4 well put a question to him that was res-5 ponsive, since he wanted to state it. 6 MR. GIBERT: Well, the question is 7 misleading, though. It is not clear whether 8 it is intended to say is that one of the considerations or was that the sole con-4 10 sideration. 11 MR. McKENNA: I assume the gentleman 12 hoped to make some money, I mean that is 13 the -- I will stand on my question. MR. GIBERT: Did the question mean 14 is that one of the considerations? 15 MR. McKENNA: The question meant what 16 it said. 17 MR. GIBERT: Motivated -- well, I will 18 object to move to strike it because what it 19 said was ambiguous. 20

Excerpts from Deposition of Max Sophier 1 MR. McKENNA: Since the witness 44 didn't find it so and answered it, I stand 2 on the question. You said that --3 MR. GIBERT: The witness hasn't said 4 he found it ambiguous. 5 (By Mr. McKenna) You said that you chitchatted 6 on the high side and the low side. What was that chitchet 7 about? 8 Well, in regards to the money that would 9 be borrowed or loaned to the D-Z Corporation as to what 10 benefits ultimately could be had for putting up the 11 money. 12 And was there any discussion about the 13 interest rate that would be paid on the load that you 14 would be making to D-Z? 15 Details in regards to how the mechanics 16 would be set up? Is that what you are referring to? 17 What the interest rate -- specifically, 18 what the interest rate would be on the note that you 19 obtained from D-Z when you loaned them the money. 20 Α Full explanation, yes. 21 What interest rate was discussed? Q 22A Six percent. 23 Q Did you question why you should loan money

at six percent when you could get more in the market

25

Δ 1524

Excerpts from Deposition of Max Sophier

elsewhere today? And when I say, "Did you question," 45

I mean, did you ask Mr. Zimmerman?

A I didn't have to ask him. I know that myself.

Q You knew that you could get more than six percent?

A You would pay -- you would pay more for the money if you loaned it, right -- or borrowed it, right? And you would get more if you bought some CD's, is that what you are trying to say?

Q Essentially.

A I know that, yes.

Q Did you ask Mr. Zimmerman in view of that fact that you could get more for it --

A No.

Q -- why you should loan money at six percent?

A Mr. Zimmerman advised that on the high side there could be a possibility of -- if the purpose of D-Z was ultimately attained, that some money could be made on this investment. And there was no way he could in any way guarantee or tell us exactly what kind of money could be made. But the possibility to regain a satisfactory return was there.

Q More than six percent?

A I don't know how much more because there

Q But your understanding was you might be able to get more than the six percent return that you would get on the note that you might be able to --

A Yes.

Q Did he say in what manner you would get it?

A No.

Q Did he mention to you there might be issued stock of D-Z which you would be permitted to purchase?

A I don't recollect exactly what and how in regards to the exact remuneration should they attain their goal. However, Jerome was in it. That was good enough for me. And we didn't really ask that many questions.

Q You didn't ask how you would get more than your six percent, and he didn't explain?

A Yes, he did, certainly he did. He said that if they were -- we are not going to invest money unless he know what we are doing. The high side was where there could be some substantial return made by the fact that they would like to control this, or buy enough stock, let's say, where their people could more or less come into this enterprise and --

Q Go ahead. Please finish.

Excerpts from Deposition of Max Sophier

1

2

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5

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A They were talking to Zimmerman and his 47 group, their intent was to get sufficient voting power to step in and take this company and -- that has such great potential in their opinion, and really get in there with their expertise and knowhow and do something with it. Where if we did, and if they were able to own stock in it, it would be a worthwhile venture.

* * *

EXCERPTS FROM DEPOSITION OF HAROLD A. LEVOW

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY, Plaintiff. CIVIL ACTION -V8-NO. 74 Civ. 2379 ROBERT E. HOLLOWAY, MELVIN (IBW) S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR. and NJB PRIME INVESTORS,) Defendants.

Deposition of HAROLD A. LEVOW, taken
by the Defendant, pursuant to notice and
subpoena and the Federal Rules of Civil
Procedure, before Forrest M. Brown and
Stuart S. Huseby, Court Reporters and Notaries
Public, at 2700 First National Bank Tower,
Atlanta, Georgia, on the 22nd day of July,
1974, commencing at the hour 10:10 a.m.

APPEARANCES OF COUNSEL:

2

1

For the Plaintiff:

STEPHEN A. MARSHALL, Esq.

3

For the Individual Defendants:

PETER D. McKENNA, Esq.

4

For the Defendant NJB Prime Investors:

DAVID PARKER, Esq.

6

5

For the Deponent:

S. JARVIN LEVISON, Esq. HUGH W. GIBERT, Esq.

DAVID ROSS, Esq.

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HAROLD A. LEVOW,

being first duly sworn, was examined and deposed as follows:

> IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be subscribed and sworn to before any notary public with the same force and effect as though subscribed and sworn to before this Court.

1		EXAMINATION
2		
_	BY MR. Mc	KENNA:
3	Q	Would you state your full name, please.
4	. A	Harold A. Levow.
5	Q	And what is your residence address?
6	A	1235 Mount Paran Road, N. W., Atlanta,
7	Georgia,	30327.
8	Q	And what is your occupation?
9	A	Executive vice president of Salvatori
10	Corporation.	
11	Q	And do you have a business address in
12	Atlanta?	
13	A	Uh-huh, 440 Englewood Avenue, S. E., 30315.

* *

Δ 1530 $_{\rm Excerpts}$ from Deposition of Harold A. Levow

4 * * *

5	Q	(By Mr. McKenna) Did there come a time
6	when you pu	rchased a note or notes of D-Z Investment
7	Company?	
8	A	There was.
9	Q	And when was that?
10	• •	When I purchased the note?
11	Q	Yes.
12	A	Sometime in May, I don't recall exactly
13	when.	
14	Q	Do you have the note or a copy of the note
15	with you?	
16	A	Uh-huh.
17	0	May I have it nlease?

Excerpts from Deposition of Harold A. Levow

1	- 1
	- 1
	- 1
_	- 1
2	- 1
	1

MR. GIBERT: The witness just handed me a packet of papers. I hand you from it the note.

Q

MR. McKENNA: We have the note deemed marked and have a copy marked in its place under the same provision that we followed?

MR. MARSHALL: That's agreeable to me.

MR. GIBERT: And me.

MR. McKENNA: I'd like to have this marked as Exhibit 19, to the deposition of Mr. Levow, a note, D-Z Investment Company, six percent promissory note, due March 31, 1975, dated 30 April 1974, and bears the face amount apparently of \$50,000.

I'd like to ask the witness first -it is deemed marked, and we'll mark another
copy, and in the meantime, would you tell
me whose are those initials that you know
of next to the figure.

THE WITNESS: Jerome Zimmerman.

Q (By Mr. McKenna) And I note in the textual portion of the note where the amount of specified, it says the principal amount of \$50,000.

A He left a word out.

\$50?

	A 1532
. 1	Excerpts from Deposition of Harold A. Levow
1	A He left an important word out.
2	Q Is that, to your knowledge, an error?
3	A Yes.
4	Q And the amount should be \$50,000 as it is
5	in figures above?
6	A Yes, correct.
7	Q And did you receive this note on the date
8	indicated on the face thereof, namely, the 30th of April
9	1974?
10	A Yes.
11	Q And how did you receive the note?
12	A Well, when I was I was out of the city
13	MR. GIBERT: Excuse me, Mr. Levow.
14	He said how did you receive the note. I
15	think he means, was it handed to you, did
16	it come in the mail, or something of that
17	sort.
18	THE WITNESS: It was handed to me.
19	Q (By Mr. McKenna) By whom?
20	A My partner.
21	Q Where?
22	A In his office.
23	Q When?
24	A When I came back from out of town. I don't

know the date.

	Excerpts from Deposition of Harola A. Levou
1	Q Was it on or after the 30th of April when
2	you came back from out of town and it was handed to you?
3	A After.
4	Q And who was the partner you are referring to
5	A Max Sophier.
6	Q And do you know how he came to have the note
7	MR. GIBERT: Excuse me. That is
8	if you know. You are not to
9	THE WITNESS: I really don't know.
10	MR. GIBERT: repeat hearsay.
11	Q (By Mr. McKenna) Did you pay for the note?
12	A I did.
13	Q And how did you pay for the note?
14	A I left a check for \$50,000 with my partner.
15	Q And did you give your partner any instruc-
16	tions what was to be done with the \$50,000?
17	A No. Yes. Well, of course, I did. It is
18	supposed to be for the note.
19	Q Did you tell him to give it to Mr. Zimmerman
20	when he delivered the note?
21	A Yes.
22	Q Do you have with you any other documents
23	withdraw the question.
24	Were there any other documents that you

received at any time up to the date of that note in

conjunction	with	your	purchase	of	that	note?
-------------	------	------	----------	----	------	-------

A I believe there is one placement -- this is the one --

MR. GIBERT: Excuse me. Shall I hand the note to Mr. Ross?

MR. McKENNA: The witness has handed me, and I'd like to mark as Exhibit 20 for identification a copy dated April 24, 1974, of D-Z Investment Company private placement memorandum, which is appended thereto three exhibits. Exhibit 1, entitled just Exhibit 1 to private placement memorandum. Exhibit 2 is the blank form of the note, D-Z Investment Company, six percent promissory note, and Exhibit 3 being a blank form of certificate and purchase order.

(Thereupon, the court reporter marked Exhibit 19 and 20 for identification.)

16 * * *

12	MR. McKENNA: May I request well
13	with respect before we go further, on
14	other documents, just with respect to the
15	private placement memorandum, which is
16	Exhibit 20 for identification, Mr. Levow,
17	can you tell me when you received that
18	private placement memorandum or any copy
19	thereof, that is, the first time you
20	received it? And my question relates
21	specifically to when in relation to the
	time that you purchased the note which
22	is Exhibit 19.
23	num surmypage. I doubt know the are

24

25

THE WITNESS: I don't know the exact date, but this is before the note was issued.

Excerpts from Deposition of Harold A. Levow

I got this first (indicating).

- Q (By Mr. McKenna) Do you recall how much before?
 - A No, I really don't.
 - Q Was it a matter of days, weeks?
 - A I imagine weeks, something like that.
- Q Well, does the fact that the note bears the date of April 30 and the private placement memorandum bears the date of April 24th refresh your recollection what the time interval was?

A Could have been a week or two.

MR. GIBERT: Excuse me, Mr. Levow,
you should avoid sheer speculation. If
you have a recollection, if this refreshes
your memory and you have a recollection,
it's fine for you to testify about it.
But don't imagine things or just speculate.

THE WITNESS: Well, I don't recall.

MR. GIBERT: All right, sir.

- Q (By Mr. McKenna) And the fact that there is only a six day interval indicated between the date there on the face of the private placement memorandum and the date of the note --
 - A No.
 - Q -- does not refresh your recollection?

A 1537 Excerpts from Deposition of Harold A. Levou 18 1 Huh-uh. 2 But may I also request, and I think your 0 counsel will agree, that you permit me to finish my 3 4 questions before you answer? 5 Sure. Who did you receive the private -- withdraw 6 Q 7 that. How did you receive the private placement 8 memorandum, a copy of which is Exhibit 20? 9 From Jerome Zimmerman. 10 A Delivered to you physically? Q 11 Yes. 12 At a meeting? Q 13 A No. 14 Where did he deliver it to you? Q 15 My office. 16 Anybody else present? Q 17 My partner, Max Sophier. 13 And when I say present, present at the time Q 19 you received the memorandum. I don't mean present some 20 place in the office down the hall. 21

Am I correct in understanding what you are

saying is that no one else, including Mr. Sophier, was

present at the time Mr. Zimmerman actually gave you

No.

Q

25

22

23

Excerpts from Deposition of Harold A. Levow

1	
	this?
2	A Mr. Zimmerman, Mr. Sophier and myself,
3	period.
4	Q He was present?
5	A Right.
6	Q Was there any discussion about the memorandum?
7	A I don't remember.
8	Q Did you go through the memorandum with Mr.
9	Zimmerman at the time?
16	A Yes.
11	Q Do you recall any discussion about any items
12	in the memorandum?
13	A No.
14	Q I give you the memorandum to look at and
15	ask, will it assist you?
16	A No, I have read it.
17	Q I'm asking you now, looking at it, or
18	looking at any portion, can you recall any things that
19	you discussed with Mr. Zimmerman at the time that you
20	received it from him?
21 ,	A No.
22	Q Are you tell me your best recollection is
23	you did not discuss anything with him?
24	MR. MARSHALL: I object to that
05	question.

MR. McKENNA: With respect to the 20
memorandum.
MR. MARSHALL: I believe that question
was asked and answered in the affirmative,
that he did discuss it. If you want to have
the reporter read back a few questions.
MR. McKENNA: No, he said he received
it from him.
MR. MARSHALL: No. But you also asked
him if he had any discussions concerning the
memorandum.
MR. McKENNA: Do you recall having been
asked that question and giving an answer?
THE WITNESS: Say it again.
Q (By Mr. McKenna) Did you have any discussion
with Mr. Zimmerman about the memorandum itself?
MR. GIBERT: My recollec ion of his
testimony, we went through it, or something
of that sort.
THE WITNESS: Yes.
Q (By Mr. McKenna) I believe the witness
indicated he went through it, not
A No, we went through it.
Q You did go through it together?

Excerpts from Deposition of Harold A. Levow

	Deposition of Harola A. Levow
1	Q But you don't recall any specific thing 21
2	you discussed about it?
3	A No.
4	Q Did he point out items to you? Did he read
5	them to you, or what?
6	A We read it.
7	Q You sat there side by side and read it
8	together, page by page?
9	A I don't remember.
	* * *

23 * * *

14	Q	Do you have anything further in your
15	possession,	custody or control which relates to NJB
16	Prime Inves	
17	A	No.
18	Q	Have you ever received any other documents
19	from or rela	ating to D-Z?
20	A	No.
21	Q	Have you ever received any correspondence
2 2	from D-Z?	•
23	A	No.
24	Q	Or from anybody on behalf of D-Z either

Mr. Zimmerman or Mr. Davis or Mr. Becker?

A 1541

Excerpts from Deposition of Harold A. Levow

A No.

MR. GIBERT: Mr. Levow, let me ask you that when he asks a question, you should let him finish and then answer in words. Nods are not taken down by the court reporter. You ought not to be nodding as he asks a question. Just let him finish and then answer in words, if you would.

THE WITNESS: All right.

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(A document was marked for identification as Exhibit 19.)

(Discussion was had off the record.)

MR. McKENNA: I would like to mark for identification a letter or a form, what appears to be a form letter bearing a date of June 11th, 1974, typed for the signature of Mr. Bruce R. Davis and Jerome Zimmerman, mark that for identification as Exhibit 21.

(The above document was marked for identification as Exhibit 21.)

Q (By Mr. McKenna) The document I have just marked, is a copy of a document that was among documents produced to my firm by Mr. Marshall's firm on behalf of D-Z. I say it is a copy, it is a copy I made over the weekend from among the documents that have been produced.

Mr. levow, I put the document which is

Exhibit 21 before you and ask you if you recall

ever receiving a copy of such a letter addressed to

yourself? When I say copy, I mean original or a

copy, any version of such a letter addressed to your
self?

A Gee, I don't remember if I received anything like this or not.

	Excerpts from Deposition of Harold A. Levow
1 -	Q It is your testimony you don't recall
2	having received that?
3	A No.
4	Q The letter begins, the first sentence,
5	"Enclosed is a questionnaire you will need to complete
6	for proposed proxy solicitation in respect of NJB Prim
7	Investors".
8	Do you recall ever having received any
9	questionnaire which related to proxies or proxy
10	solicitations in respect to NJB Prime Investors?
11	A I really don't recall if I did or not.
12	Q You don't recall one way or the other?
13	A I don't recall if I did.
14	Q Well, are you saying is it your best
15	recollection that you did not?
16	A Right.
17	Q You still studying it or may I take it
18	back?
19	A No.
20	Q Mr. Kroll, I show you
21	MR. GIBERT: No, no, this is Mr. Levow.
22	Q (By Mr. NoKenna) Mr. Levow, I show you
23	a copy of document well, of a letter of June 11th,
24	1974, which appears in and I am just saying this

very quickly, I haven't compared them word for word,

25

Excerpts from Deposition of Harold A. Levov

And this particular letter, having been addressed to Mr. Kroll, and it has annexed to it a questionnaire as of May 31, 1974 in connection with proposed proxy solicitation, and the heading above that of NJB Prime Investors, such questionnaire being Exhibit 9A to Mr. Kroll's deposition. I ask you to look at the questionnaire and ask you if that refreshes your recollection as to whether or not you ever received such a questionnaire?

A Yes, I remember this now. I don't have it, though, I don't have it here, I remember receiving it, though.

Q And you recall when you received it?

A No.

Q Do you recall now receiving it with a forwarding letter?

A Yes, yes.

Q Of June 11th?

A Yes, after seeing this questionnaire, I remember it now, I received this.

Q Did you complete the questionnaire, fill it out?

A No, no.

Q Do you recall what you did with it?

	A 1545
1	A I must have it in my office somewhere.
2	
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4	to produce it as soon as it is physically feasible.
5	A All right.
6	MR. GIBERT: I have no objection
1	MR. McKENNA: Along with a copy of
7	the letter.
8	MR. GIBERT: I have no objection to
9	the witness producing either the letter or
10	the questionnaire. He says it must be in
11	my office somewhere, I have no objection to
12	his finding it, if he can. But, don't
13	impose on me the burden of producing it.
14	MR. McKENNA: Let me put it this way,
15	if he is unable to locate it, I would like
16	to be notified in due course.
17	MR. GIBERT: All right. Mr. Levow,
18	would you make a resonable effort and let
19	me know the results?
20	THE WITNESS: Sure. I remember getting
21	this, yes.
22	Q (By Mr. McKenna) Did you discussion this
23	questionnaire with anybody when you received it?
24	A No, no.

Q

Is there any particular reason why you did

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not fill it	out	and.	send	it	back?
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A A real good reason, I am a busy man, I must have forgot.

Q Did you ever receive any call or communication from anybody asking you to fill out the quastion-naire and send it back to you?

A No.

Q When did you first hear of either D-Z Investment Company or the investment opportunity presented by D-Z Investment Company?

A You mean the day?

Q Yes.

A I don't remember the date.

Q Can you relate it in terms of the date of the note of 30 April, 1974, as to whether it was days, weeks or months prior to that?

A No, I can't.

	backing of the beposition of harota A. Lebow
1	Q You have no recollection now as to days 30
2	opposed to weeks, or weeks opposed to days?
3	A No.
4	Q Can you tell me whether it was more than
5	two or three days?
6	A No, I can't.
7	Q How did you first hear about the investment
8	opportunity?
9	A Jerome Zimmerman called me on the telephone,
10	asked to come over to my office.
11	Q What did he say to you on the telephone?
12	A I have known the man for 25 years. He said
13	he would like to come over to my office to talk to me.
14	I said, come on.
15	Q Did he say what he wanted to talk to you
16	about?
17	A No.
18	Q Did he ask to talk just to you or to you
19	and Mr. Sophier, your partner?
20	A To both of us.
21	Q And as a result of that telephone conversation
22	did you invite him over to your office?
23	A I did.
24	Q And do you know how much after the telephone
	convergation be came over?

1	Excerpts from Deposition of Harold A. Levow A No, I don't. 31
2	Q Was it the same day or was it
3	A I don't recall.
4	Q at a later day?
5	A I don't recall.
6	Q Did you make any notes or memos of the
7	telephone conversation?
8	A No.
9	Q I take it Mr. Zimmerman at some time subse-
10	quent to the telephone conversation did come to your
11	office?
12	A Yes.
13	Q And do you recall what time of day it was?
14	° A No.
15	Q Did you make any notes or memos of your
16	discussion with him
17	A No.
18	Q when he came to your office?
19	A No.
20	Q Tell me in words or substance, to the best
21	you can recollect, what Mr. Zimmerman said to you on
22	that day when he came to your office, what he said to
23	you, first of all.
24	A Well, he said that the D-Z Investment
05	Corporation Company, whatever the name is was going

Excerpts from Deposition of Harold A. Levou
to try to get control of an REIT, the name of which he
did not discrose, and if we were interested in loaning
money to D-Z Corporation
Q If you were interested in loaning money
what?
A To the D-Z Corporation, to go into this
project.
Q Is that all?
A Yes.
Q Did he mention D-Z Investment Company by
name?
A Yes.
Q Did he tell you whether or not the company
had already been formed or whether it was just contem-
plated or what?
A First I ever heard of i
Q Did he tell you the company had already been
formed as opposed to having still been in the planning
stages?
A Don't recall. I don't know if it was in
the planning stages or
Q I am asking you what he told you, not
A He didn't tell me anything.
Q Didn't tell you how they were planning to
get control of an REIT?

You have testified previously that at some

point you received it from him and reviewed it. Was it

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1	at that meeting?
2	A I don't remember.
3	Q Did you have more than one meeting with Mr.
4	Zimmerman other than the date which you actually received
5	the note withdraw the question.
6	As I understand it, you were not in your
7	office at the time the note came in?
8	A Right.
9	Q So did you have more than one meeting with
10	Mr. Zimmerman with respect to the potential investment
11	in D-Z Investment Company at or prior to the time you
12	received the note?
13	A I don't remember.
14	Q You don't remember whether or not you had
15	more than one meeting?
16	A No.
17	Q You remember one meeting specifically?
18	A One meeting specifically.
19	Q You don't remember having had a second
20	meeting?
21	A No.
22	Q Do you recall specifically whether or not
23	there were more than two meetings?
24	A No.
25	Q Can you rule out there were more than two

Excerpts from Deposition of Harold A. Levow

fr	OM	your	rec	:011	ec	tion?
TI	Om	your	rec			CTOR

A I'll start over again. You asked me if I had one meeting.

- Q You testified you had one for sure.
- A Now, you asked me if I had more than two.
- Q You are saying that you had -- it is possible you had more than one, which could be two. I'm asking you, is it possible that you had more than two? And when I say "possible," I'm not asking you to speculate. I'm asking from your recollection, is it conceivable that there could have been more than two?

MR. GIBERT: Mr. McKenna, if he has testified he doesn't remember whether there was more than one, how can he possibly remember whether there was more than two?

MR. McKENNA: I think it is quite conceivable. He said there could have been one or two, but he could -- obviously, he could probably tell me whether or not there were ten or more.

MR. GIBERT: I would agree he could probably say there were not a hundred, but I don't see how he could possibly --

MR. McKENNA: I'd like to know if he can -- I'd like the witness' answer.

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1	THE WITNESS: No, I don't remember.
2	Q (By Mr. McKenna) Did Mr. Zimmerman say
3	anything about the nature of the loan, the terms of the
4	loan at that first meeting that you have described?
5	A Yes, it was a six percent loan for one
6	year.
7	Q Anything else?
8	A No.
9	Q Was there any discussion as to why you
10	should was there any discussion about the amount of
11	the loan?
12	A Yes, \$50,000.
13	Q \$50,000 for each yourself and Mr. Sophier?
14	A Right.
15	Q Was there any discussion as to why you
16	should put up \$50,000 at six percent when you could
17	get more elsewhere?
18	A Yes. There was no discussion. I know
19	myself why. I thought it was a good opportunity to
20	give him that money and gec in on the ground floor of
21	D-Z Investment Company, who one day may make good
22	profits where I could buy into the company.

Excerpts from Deposition of Harold A. Levow

MR. G.BERT: Mr. Levow, at this point

I want to ask you to respond to his question
and not discuss various other things that
are not called for by the question. The
question was: Was there any discussion about
why you should invest 6 percent when you
could get more money on other ways than 6
percent? And the answer to that question
is yes or no, there was --

THE WITNESS: No, no discussion.

Q (By Mr. McKenna) You said you knew you could get in on the ground floor. Was there any discussion of your getting in on the ground floor of D-Z Investment Company?

A No.

Q Was there any discussion about what other opportunities there would be for you with respect to D-Z Investment Company, other than obtaining 6 percent return on a \$50,000 promissory note?

A No.

Q Well, how did you know that it was an opportunity for you to get in on the ground floor of D-Z Investment Company, if it were to become successful?

A I didn't know, I took a chance.

	Excerpts from Deposition of Harold A. Levow
1	Q Well, was anything said to you by Mr.
2	Zimmerman or anybody else that you would have an
3	opportunity to get in on the ground floor? .
4	A Say it again.
5	Q Was anything said to you that you would have
6	an opportunity to get in on the ground floor?
7	A No.
8	Q You just assumed that if you gave them
9	\$50,000 at 6 percent, that he might give you an
10	opportunity later to make a to get a better invest-
11	ment, is that correct?
12	A Right.
13	Q He didn't discuss it with you?
14	A No.
15	Q He never mentioned anything to you about
16	the note being convertible in one form or another into
17	an equity investment?
18	A No.
19	Q Do you recall him ever having discussed
20	that with you?
21	A No.
22	Q Did you have any discussions about D-Z
23	Investment Company or potential investment in D-Z
24	Investment Company, whether by name or otherwise,

with anybody other than Mr. Zimmerman up to the time

1556 Excerpts from Deposition of Harold A. Levow 1 39 you received the note? 2 A No. 3 No discussions with Mr. Davis? 0 4 No. 5 You know Mr. Bruce Davis? Q 6 I met him once, I think. I wouldn't know 7 him if I saw him. 8 You know Mr. Ralph Becker? Q 9 Yes. 10 You know him well? 0 11 Yes. 12 How long have you known Mr. Becker? 0 13 Twenty-five years. 14 Have you any business dealings with Mr. 0 15 Becker? 16 No. A Do you know him socially? 17 Q Socially. 18 Only socially? 19 Q That's right. 20 Did you ever discuss the D-Z Investment Q 21 Company investment with him prior to receiving the 22 note? 23

Q Mr. Saul Becker, do you know him?

24

No.

	Deposition of national A. Legow
1	A Very well.
2	Q Same way as his brother, Ralph?
3	A Same way.
4	Q Ever have any discussion with him prior to
5	receiving the note about D-Z?
6	A No.
7	Q Did you have any discussion with anybody
8	other than Mr. Zimmerman after you received the note
9	about D-Z Investment Company?
10	A No.
11	Q And I am ruling out your lawyer.
12	A No.
13	Q Did you ever have any discussion with Mr.
14	Zimmerman after you received your note about D-Z
15	Investment Company?
16	A No.
17	Q Did you ever have any communcations what-
18	soever with Mr. Zimmerman or anybody else on behalf
19	of D-Z since you received your note?
20	A No. Well, except whatever I
21	Q Except the documents that you have produced
22	today that you have identified that you received?
23	A Right.
24	MR. GIBERT: Well, he has also
25	MR. McKENNA: Well, I I am sorry.

Excerpts from Deposition of Harold A. Levow

1	MR. GIBERT: He has also testified that 41
2	he thinks he received that questionnaire
3	relating to proxy.
4	MR. McKENNA: Yeah, I was including
5	that.
6	Q (By Mr. McKenna) When I say that you, do
7	you recall receiving that?
8	A I do recall receiving that.
9	Q But nothing else?
10	A No.

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Q (By Mr. McKenna) Now, at the first meeting which you testified you had with Mr. Zimmerman, you testified that he said in words or substance that D-Z Investment Company was going to try to get control of an REIT, the name of which he did not disclose?

A Correct.

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Q Did Mr. Zimmerman tell you what reason, if any, he had for not disclosing the name of it?

A He told me, but I don't remember what he told me.

Q Does it refresh your recollection that he told you that they wanted to keep it confidential so

Do you recall from whom you learned it?

I would imagine from -- well, no sense

Q

No.

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Excerpts from Deposition of Harold A. Levow

TH THEFTHENE T CON C BROW	in	imagining.	I	don'	t	know.
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Q Did you ever discuss the subject matter of D-Z Investment Company and your investment therein with anybody besides Mr. Zimmerman and your partner, Mr. Sophier?

A No.

Q Do you recall how long after you received the note which is dated April 30 that you were advised of the identity of the REIT?

À No.

Q At or prior to the time you received the \$50,000 note, were you told or informed in any manner anything about the number of percentage of shares of the REIT that it was intended that D-Z would acquire?

A No.

Q At or prior to the time you received your note were you told anything about what plans D-Z Investment Company had concerning what they were going to do with the REIT once they got control of it?

A No.

Q At or prior to the time you received the note were you told anything about a possible merger of the REIT into either D-Z Investment Company or Security Management Company?

A No.

cerpts from Deposition of Harold A. Levov
49 1
Are you familiar with Security Management
No.
Have you heard of it before?
I have heard the name, yes.
At or prior to the time you purchased the
acquired your note, were you told anything
would be the trustees or the managers or
of the REIT if D-Z got control?
No.
At or prior to the time that you acquired
e, were you told anything concerning the operations
s in general?
No.
Were you familiar with the operation of
No.
Do you know what an REIT is?
Real Estate Investment Trust.
Do you know what it does?
No.
Were you ever informed as to what it does?
No.

tax considerations that are accorded to an REIT as

opposed to another corporation?

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Prior to the time you acquired your note Q were you ever advised that if 50 percent or more of the stock of an REIT became concentrated in the hands of five or less persons the special tax benefits which were accorded to an REIT would be lost?

No.

By the way, getting back to the meeting Q you had with Mr. Zimmerman, I don't believe I have covered this, and if I have, I apologize, but what if anything was your response to his offer of this opportunity to invest?

I told him I would think it over and call him.

> And did you? Q

Or he was to call me the next day, one or the other, a couple of days.

Did you, in fact, have a telephone conversa-Q tion within a couple of days thereafter?

> Yes. A

And do you recall now who initiated the Q telephone conversation?

> And what did he say to you and what did you Q

1	say to him in that telephone conversation?
2	A I don't remember.
3	Q Did you advise him in the telephone conversa-
4	tion that you would buy one of the notes?
5	A Yes.
6	Q Did he tell you how many persons that the
7	notes were being made available to?
8	A No.
9	Q Did he identify anybody else that the
10	note to whom the notes were being made available
11	other than to yourself and your partner?
12	A No.
13	Q Did he identify anybody else who had already
14	purchased the note or committed himself to purchase the
15	note?
16	A No.
17	Q At or prior to the time you acquired your
18	notes in D-Z Investment Company, were you informed as
19	to who the shareholders were of D-Z Investment Company?

the private placement memorandum, the copy that has

been marked on your deposition, and ask you if -- I

refer you to the first page thereof, which I believe

refreshes your recollection that you were so informed?

I must have been, it is here.

without look at -- going through it, anything that you

remember in that private placement memorandum when

Well, do you recall anything right now.

identifies the shareholders, and ask you if that

Well, I show you the Exhibit 20, which is

A No.

you received it?

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MR. GIBERT: Why don't you ask him

- A Do I remember anything?
- Q Do you remember anything that you read in that private placement memorandum?
 - A Yes, I would imagine so.
 - Q What do you remember?
- A D-Z Corporation, Investment Corporation, was going to try to get control of an REIT, that was the most important thing to me.
 - Q Anything else?
- A Yes, that there would be a loan at 6

 percent interest for one year. I don't recall anything
 else.

specific things.

MR. McKENNA: Well, I will get to specific things. I just want to know if he can remember anything offhand.

- Q (By Mr. McKenna) Well, does this, looking at the first page, refresh your recollection as to who the shareholders or as to what you were informed as to who the shareholders were of D-Z Investment Company?
 - A Yes, it says so right here.
 - Q And what does it say?
 - A Want me to read it to you?
- Q Well, what -- yes. Well, not read it to me, tell me what it says to you.
- A The capital stock is presently owned as follows: Security Management, 50 shares; Jerome Zimmerman, 50 shares, that's in care of Apollo Forest Products. Members of the board are Bruce Davis, Saul Becker, Ralph Becker and Jerome Zimmerman.
- Q Now, am I correct in understanding that
 you had be heard Security Management Company previous
 to this?
 - A Not to my recollection.
- Q Had you on one occasion been offered an opportunity to invest in a real estate syndication

_	_	Exc	erpts from Deposition of Harold A. Levow
1	known	as	Fourteenth Street? 54
2		A	Yes.
3		Q	And who offered you that opportunity?
4		A	Jerome Zimmerman.
5	,	Q	And you turned it down?
6		A	No.
7		Q	You did invest in it?
8		A	Yes.
9		Q	Do you recall now whether or not Security
10	Manage	emer	nt Company was also involved in that syndi-
11	cation	n?	
12		A	I don't recall.
13		Q	Do you recall whether or not Mr. Davis
14	was in	nvol	lved in that sundication?
15		A	I am not certain.
16		Q	Do you know what the D-Z in D-Z Investment
17	Compai	ay 1	stands for, if anything?
18		A	Yes.
19		Q	What does it stand for?
20		A	Davis-Zimmerman.
21		Q	And how do you know that?
22		A	I don't, I've just taken it for granted.
23		Q	You deduced it?
24		A	Right.
25		Q	Other than what is on this first page of
	•	-	

Excerpts from Deposition of Harold A. Levow

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this private placement memorandum, do you know anything else about these share holdings of D-Z Investment Company?

A No.

Q Have you ever been informed in any manner, shape or form as to what was paid by Security Management Company and Mr. Zimmerman for their shares of D-Z?

A Excuse me.

Q This private placement memorandum indicates that the shares of 50 -- of D-Z are held by Security Management Company and by Mr. Zimmerman.

A Right.

Q And I amasking you, have you ever been informed as to what Security Management Company and Mr. Zimmerman paid for the shares of D-Z, which they received as set forth in this private placement memorandum?

A No.

Q Have you ever received any documents containing information about the financial condition of D-Z Investment Company?

A No.

Q Have you ever had the books and records of account of D-Z Investment Company made available to

you?

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No.

You testified previously that Mr. Zimmerman mentioned something about to get control of the REIT. in addition to buying stock, there might possibly be a proxy contest.

Right.

And you have also testified that you did Q receive a copy of the questionnaire relating to the proxy solicitation?

Correct.

A proxy solicitation, do you recall anything else that you were informed in any manner, shape or form, concerning a possible solicitation of proxies or consents to a call of shareholders meeting of --I withdraw the question. Do you recall anything else that you were told or informed in any manner, shape or form with respect to solicitation of proxies or consents, either to be voted at the annual shareholders meeting of NJB Prime or for the call for a special shareholders meeting?

I don't understand what you said. Say it again.

> Would you read that question, please? Q (Question was read by the reporter.)

1	A (By the witness) No.
2	
	Q At or prior to the well, have you ever
3	been informed that D-Z had hired or contracted with
4	a firm which specialized in proxy solicitation for
5	A No.
6	Q the purpose of soliciting proxies?
7	A No.
8	Q Have you ever been informed or been advised
9	or been given any information concerning D-Z borrowing
10	funds on margin for which they would use the NJB Prime
11	stock as collateral for the purposes of purchasing the
12	NJB stock?
13	A No.

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Q Are you aware that D-Z is in fact buying

NJB stock or margin for which it is purchasing the

stock for which it is pledging the stock it purchases?

MR. GIBERT: Is purchasing?

MR. McKENNA: Is purchasing.

MR. GIBERT: It isn't purchasing,

as I understand it. There is a --

MR. McKENNA: I withdraw the question.

Are you aware at the present time that D-Z, in order to purchase stock of NJB Prime, used margin borrowings for which it pledged the NJB stock that it purchased?

THE WITNESS: No.

Q (By Mr. McKenna) I put before you a copy of the private placement memorandum, which is Exhibit 20 on your deposition, and refer you particularly to the paragraph beginning, "Use of proceeds from note." And I will read it: "It is expected that substantially all the proceeds from the issuance of the six percent promissory notes due March 31, 1975 will be used to purchase stock in the selective real estate investment trust on margin and pay all the related costs of acquisition, including legal and other expenses related to such purchases, such as interest on any margin debt."

	Excerpts from Deposition of Harold A. Levow
1	The next paragraph: "The stock purchased 59
2	by the company will be collateral for the margin debt."
3	Do you recall having read those two para-
4	graphs at or after the time you received that private
5	placement memorandum?
6	A I must have. I read the whole thing.
7	Q You did read the whole thing?
8	A I did.
9	Q But notwithstanding having read the whole
10	thing, you did not recall that at least up until I
11	just put that in front of you, that you were informed
12	that the company was purchasing the stock on margin
13	and using the stock as collateral for margin debt?
14	A No, I did not recall.
15	Q Does that refresh your recollection that
16	you were so informed?
17	A I was informed right here, yes.
18	Q But only by that private placement memorandum?
19	A Yes.
20	Q Did you discuss that particular portion of
21	the private placement memorandum with Mr. Zimmerman?
22	A No.
23	Q Other than what is contained in the private
24	placement memorandum, have you been informed about any-

thing about the margin borrowings of D-Z?

. 1	n
1	A No.
2	Q Have you ever been informed about the rate
3	of interest they are paying for margin borrowings?
4	A No.
5	Q Have you ever received, since the date of
6	your first discussion with Mr. Zimmerman about possible
7	purchase of a note of D-Z, any reports containing
8	financial information with respect to NJB Prime Investors
9	A No.
10	Q Have you ever been shown any such financial
11	reports?
12	A No.
13	Q Have you ever received or seen or been shown
14	any financial reports of Security Management?
15	A No.
16	Q Are you aware of any prior business dealings
17	between Security Management Company and Mr. Zimmerman
18	other than the 14th Street Project?
19	A No.
20	Q Are you aware of any prior business dealings
21	and when I say prior, I mean prior to D-Z between
22	Mr. Zimmerman and Mr. Saul Becker?
23	A I beg your pardon? I didn't understand.
24	Q Are you aware of any business dealings
25	between Mr. Zimmerman and Mr. Saul Becker prior to and

other than D-Z Investment Company?

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Have you ever been informed that D-Z Invest-0 ment Company has rented an apartment in the personal name of Mr. Davis in New York City with a rental of \$750 a month?

No.

MR. GIBERT: If that is true.

MR. McKENNA: I asked him if he has ever been informed. I will represent that I have a basis for that.

MR. MARSHALL: What is the basis? MR. McKENNA: The basis is a copy of a memorandum addressed to Mr. Lou Brenner from Bruce Davis, dated May 28,

MR. MARSHALL: May I see that?

1974, which so states.

MR. McKENNA: The memorandum, I might say, was the copy which I am handing you is again a copy that I made over the weekend of a document that was produced to my firm by Mr. Marshall's firm.

What if anything, Mr. Levow, were you told about how the note which you purchased, the note of D-Z which you

1	purchased, would be repaid?
. 2	THE WITNESS: How if any what?
3	Q (By Mr. McKenna) What if anything were
4	you told about how D-Z would obtain the funds to repay
5	the note which it was selling you for \$50,000?
6	A I don't recall if I was told or not.
7	Q You don't recall being told anything?
8	A No.
9	Q Where did you obtain the funds to purchase
10	the note?
11	A Fulton Bank, Fulton National Bank.
12	Q You borrowed the money?
13	A Yes.
14	Q Did you give any collateral for the borrowing
15	A No.
16	Q Did you prepare any applications for a loan
17,	to the bank?
18	A No.
19	Q Was there any other documents executed by
20	either you or the bank in connection with that loan?
21	A No.
22	Q Would you tell me the branch and the location
23	of the Fulton Bank?
24	A Main branch.
25	Q Give me the full name, branch and address.

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A Fulton National Bank. I think it's Marietta Street, main branch, Atlanta, Georgia.

Excerpts from Deposition of Harold A. Levow 1 Did you tell Mr. Zimmerman that you borrowed Q 2 the funds in order to purchase the note? 3 A No. Did Mr. Zimmerman ask you how you were 0 5 going to obtain the funds to purchase the note? 6 No. 7 Did you give the Fulton Bank a note Q 8 evidencing the loan? 9 You mean did I sign a note? 10 Q Yes. Of course. 11 Q Do you have a copy of that note? 12 No. 13 Q At or prior to the time that you acquired 14 the note of D-Z Investment Company, were you asked any 15 questions by Mr. Zimmerman or anyone else on behalf 16 of D-Z about your financial condition? 17 No. 18 Q Did Mr. Zimmerman or anyone else on behalf 19 of D-Z request a financial statement or any other 20 documentary proof of your financial condition? 21 No. A 22

Q Do you recall now what, if anything, you were told about other securities, that is, apart from the 6 percent promissory note which D-Z Investment

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	Excerpts from Deposition of Harold A. Levow
1	Company intended to issue?
2	A Other securities?
3	Q Yes, do you recall having been informed
4	anything about any other securities, any stock or
5	other notes that D-Z Investment Company intended to
6	issue or proposed to issue or contemplated issuing in
7	the future?
8	A Yes, I believe they said in this private
9	placement that they were going to sell shares or
10	they may sell shares in the D-Z Investment Corporation.
11	Q Do you recall anything else about these
12	shares, what the price would be, how many would be sold
13	A No, I don't, no.
14	Q I put before you the private placement
15	memorandum and the particular beginning on page 7,
16	on the bottom, and continuing on over through page 8
17	and the unnumbered page there following, the portion
18	beginning "Issue of units under small issue registra-
19	tion." I will ask you to review that.
20	A Okay.
21	Q Now, at the time that you received the

private placement memorandum and reviewed it with Mr. Zimmerman, do you recall having reviewed that

portion specifically?

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A Not specifically, but I must have read it.

	Excerpts from Deposition of Harold A. Levow
1	Q You don't have any specific recollection 66
2	of having read that portion?
3	A No.
4	Q Did you have any recollection of having
5	discussed that with Mr. Zimmerman?
6	A No.
7	Q Have you ever been told anything about who
8	would get the additional securities that D-Z was
9	contemplating issuing as set forth therein?
10	A You mean who the 25 persons would be, you
11	mean, is that what you mean?
12	Q Yes.
13	A No.
14	Q Were you ever informed in any manner, shape
15	or form that you as a note purchaser would have a right
16	of first refusal or a first opportunity or first crack
17	in any shape or form at this package which is referred
18	to therein of stock and additional notes?
19	A No.
20	Q Was it your understanding that you and other
21	note purchasers would have such an opportunity?
22	A Understanding between whom?
23	Q Was it your understanding that you would?
24	A My own understanding, yes, I assumed it.
25	Q And did that figure into your determination

Excerpts from Deposition of Harold A. Levow

1	or decision	to purchase the note at 6 percent?
2	A	Yes.
3	Q	By the way, what interest rate are you
4	paying the	bank on the loan?
5	A	Eight percent.
		* * *
1	Q	(By Mr. McKenna) Mr. Levow, what is your 69
2	understandin	g as to whether or not the note that you
3	purchased fr	om D-Z for \$50,000 is secured or unsecured?
4	A	What is my understanding of it?
5	Q	Yes.
6	A	I don't know.
7	Q	You don't know whether or not it is secured?
8	A	No.

	Excerpts from Deposition of Harold A. Levow
1	Q Did you at any time suggest to Mr. Zimmerma
2	other persons who you thought might be interested in
3	purchasing the D-Z notes?
4	A No.
5	Q Do you know if Mr. Sohpier made any such
6	suggestion?
7	A I don't know.
8	Q Did you ever discuss the opportunity to
9	purchase these notes or availability of these notes
10	with anyone other than Mr. Sophier?
11	A No.
12	Q Do you have any knowledge or information
13	concerning who else has been approached by Mr.
14	Zimmerman or anyone else on behalf of D-Z concerning
15	purchase of notes?
16	A You mean before, at that time?
17	Q I mean as of right now.
18	A No.
19	Q When I say "as of right now," I would
20	include as of that time, of course.
21	A Yes, sir. No, I don't.
22	Q Did you ever have any discussion with
23	anybody concerning the possible parti ipation by them
24	in your note?

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No.

1531 Excerpts from Deposition of Harold A. Levow 731 1 Have you given any such participations? Q 2 No. 3 Do you know if Mr. Sophier has? Q No, he hasn't, to my knowledge. A 5 Other than this particular investment, have Q 6 you ever loaned money to any person, corporation or 7 other entity for the purpose of purchasing stock? 8 No. 9 I refer you to the private placement 10 memorandum, which is Exhibit 20 on your deposition. 11 page 3, first paragraph, and it reads specifically, 12 the first two sentences: "The notes are being ordered 13 and sold without registration under the Securities Act of 1933, as amended. In reliance upon the exemption 14 15 from registration for non-public offerings, the availability of such exemption depends, in part, upon 16 the accuracy of certain representations, declarations 17 and warranties, which a purchaser will be required 18 19 to make." And I put that before you and ask you can 20 you recall now any representations, warranties or 21 declarations you made in conjunction with your obtaining 22

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the note.

No.

Q Do you recall having executed any documents

in conjunction with your having obtained the note?

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MR. MARSHALL: I am sorry, I missed the witness' last answer.

I refer you specifically to --

THE WITNESS: No.

No.

MR. McKENNA: No he said.

Q (By Mr. McKenna) To the form of certificate and purchase order which is annexed as Exhibit 3 to the private placement memorandum, being Exhibit 20 on your deposition, and I ask you if you recall having executed any such document in connection with your obtaining the note?

A You mean did I fill it out?

Excerpts from Deposition of Harold A. Levow

	Excerpts from Deposition of narota A. Letow
1	Q Did you sign such a document? 75
2	A No.
3	Q Are you presently aware of any amendments
4	that have been made to the private placement memorandum,
5	dated April 24, 1974?
6	A No.
7	Q Are you aware of any changes that have not
8	been reduced to physical, documentary amendments?
9	A Any what?
10	Q When I say "amendment," I meant physical,
11	documentary amendments in writing.
12	A No.
13	Q Either an amendment made to it or an amended
14	version of it?
15	A No.
16	Q Are you aware of any changes having been
17	made in the understanding which is represented by this -
18	A No.
19	Q document?
20	A No.
21	Q Have you ever been informed of any variance
22	in the terms of the private placement memorandum?
23	A No.
24	Q Never been informed of any non-compliance
25	with any of the terms of the private placement memorandum?

A No.

Q In determining and deciding to purchase the note, did you consult and rely upon any personal investment, tax or legal advisor?

A No.

Q Have you ever been informed as to the number of shares or the percentage of shares of NJB that D-Z has purchased?

A No.

Q Do you have any knowledge as to what are the intentions and plans of D-Z with respect to the further purchase of shares of NJB Prime?

A No.

Q Did you discuss the proposed purchase of the note with Mr. Sophier before you made your decision to purchase the note?

A Yes.

Q Did you discuss it with him? Well, what did you say to him and what did he say to you?

A I guess over lunch one day we just discussed it briefly whether we should go into this or not. And we decided we should.

Q When was that?

A I don't recall.

Q Can you place it in relation to the meeting

Excerpts from Deposition of Harold A. Levow

1	with Mr. Zimmerman that you testified about, the
2	meeting in your office?
3	A It must have been after the meeting.
4	Q Did you discuss it with Mr. Sophier at the
5	meeting?
6	A No.
7	Q Any other discussions with Mr. Sophier?
8	A No.
9	Q You said that you decided that you should
10	make the investment in this luncheon discussion with
11	Mr. Sophier. Was there any discussion as to why?
12	A Of course.
13	Q What was the discussion?
14	A To make a profit.
15	Q In what way?

	Excerpts from Deposition of Harold A. Levow
1	A If we would get in on the I told you 78
2	if we would get in on the ground floor of the D-Z
3	Investment Company, we felt that we would it would
4	be a good investment, but we would make a profit on
5	our investment.
6	Q Well, how did you understand that a profit
7	would be made?
8	A If D-Z Investment Company were to get
9	control of the REIT, which we did not know the name
10	of at that time, we felt that the D-Z Investment Compan
11	would their stock would be worth more money.
12	Q D-Z Investment Company stock?
13	A Right.
14	Q And you understood you would have an
15	opportunity to get that stock?
16	A Correct.
17	MR. MARSHALL: I am going to object
18	to the form of that question, Mr. McKenna.
19	I think it was misleading, but I think the
20	witness' prior testimony adequately sets
21	forth what his understanding was. When you
22	use the term "opportunity".
23	MR. McKENNA: Well, I am not trying
24	to characterize it, I am just trying to

tie it in.

A 1537 Excerpts from Deposition of Harold A. Levow 1 CROSS-EXAMINATION 81 2 BY MR. MARSHALL: 3 Q Mr. Levow, the investment in the 14th Street 4 was that made in your name or in your wife's name? 5 My wife's name. 6 When you purchased a note and the note I am Q 7 referring to is the one you produced, which is marked 8 Exhibit 19 on this deposition, when you purchased that 9 note from D-Z Investment Company, did you understand 10 that this was a speculative investment on your part? 11 A Of course. 12 Is your net worth, or was your net worth at the time you made, or at the time you made that 13 14 note. in excess of \$150,000? 15 Yes. MR. McKENNA: I object to the form 16 of the question. I think the proper 17 question is what his net worth was. 18 MR. MARSHALL: If the witness has 19 no objection to answering that question, 20 I will accept that. 21 THE WITNESS: What my net worth 22 was? 23 MR. MARSHALL: At that point in 24

time.

1	THE WITNESS: I don't know.
2	MR. MARSHALL: I have no further
3	questions.
4	MR. GIBERT: I have no questions.
5	REDIRECT EXAMINATION
6	BY MR. McKENNA:
7	Q Do you know how much in excess of \$150,000
8	your net worth was at that time?
9	A How much in excess?
10	MR. GIBERT: He already testified
11	he didn't know what it was. It would be
12	a mathematical computation.
13	THE WITNESS: I don't know.
14	Q (By Mr. McKenna) Well, now, briefly outline
15	for me what assets you have against what liabilities
16	you have which composes your net worth.

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Excerpts from Deposition of Harold A. Levow 1 MR. GIBERT: I am going to permit the 2 witness to describe one asset that he has. 3 THE WITNESS: I own 55,757 of GENESCO 4 stock that is traded on the New York Stock 5 Exchange, and the last quote is around \$5 6 a share. 7 Q (By Mr. McKenna) Anything else? 8 I don't believe it is MR. GIBERT: 9 necessary that he go into anything else. 10 MR. McKENNA: Why note? 11 MR. GIBERT: Because that clearly establishes that it is in excess of \$150,000. 12 MR. McKENNA: That establishes the net 13 worth, that establishes that he has an asset 14 and what are the gentleman's liabilities? 15 I could think of one, he has a \$50,000 16 liability to the bank that he borrowed the 17 money from at 8 percent. Maybe he has some 18 other liabilities of a similar nature. 19 THE WITNESS: I have got in a checking 20 account right now --21 (By Mr. McKenna) Fine, that's another Q 22 How much you have in the checking account? asset. 23 \$50,000. A

Where is the checking account?

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Excerpts from Deposition of Harold A. Levow

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- A It is at the Mercantile National Bank.
- Q Anything else?

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MR. GIBERT: I am going to ask the witness a question for the record directed to the subject.

Mr. Levow, we know of your loan from the bank of \$50,000. Now, aside from that \$50,000 loan and any loan that you may have on your house, do you have liabilities as high as \$75,000?

THE WITNESS: No. sir.

MR. McKENNA: Well, I'm going to object to the form of the question. assume you are asking this in terms of some form of cross-examination, and although it interrupts mine, I have no objection to that. But I don't understand what you mean by a liability in excess of \$75,000.

MR. GIBERT: I said as high as.

MR. McKENNA: You mean any single liability?

MR. GIBERT: That total \$75,000.

MR. McKENNA: Still I'd like to know whether any specific liability he has, let's say, in excess of \$50,000, would you tell me that?

A 1592 Excerpts from Deposition of Harold A. Levow

1	MR. GIBERT: No, no.	94
2	MR. McKENNA: I'll put aside his	
3	house because since I assume his house	
4	is worth more than the mortgage.	
5	THE WITNESS: We've got eleven payments	
6	left of \$130.	
7	MR. GIBERT: Leaving aside the house	
8	and the \$50,000 loan, do your other liabilities	
9	total as high as \$75,000?	
10	THE WITNESS: No, sir.	
11	MR. McKENNA: Do they total as high	
12	as \$60,000?	
13	THE WITNESS: No, sir.	
14	MR. McKENNA: \$55,000?	
15	THE WITNESS: No, sir.	
16	MR. McKENNA: \$45,000?	

EXCERPTS FROM DEPOSITION OF HARVEY JACOBSON

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY. Plaintiff, CIVIL ACTION -vs-NO. 74 Civ. 2379 ROBERT E. HOLLOWAY, MELVIN (IBW) S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER. HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR. and NJB PRIME INVESTORS,) Defendants.

Deposition of MR. HARVEY JACOBSON,
taken by the Defendants, pursuant to notice and
subpocna and the Federal Rules of Civil
Procedure, before Forrest M. Brown and
Stuart S. Huseby, Court Reporters and Notaries
Public, at 2700 First National Bank Tower,
Atlanta, Georgia, on the 22nd day of July,
1974, commencing at the hour of 2:05 p.m.

Excerpts from Deposition of Harvey Jacobson

15		EXAMINATION	
16	BY MR. McKE	NNA:	
17	Q	What is your full name, please?	
18	A	Harvey Jacobson.	
19	Q	And what is your residence address?	
20	A	3236 East Wood Valley Road, N. W.,	
21	Atlanta.		
22	Q	And what is your business?	
23	٨	I am group vice president and director	
24	of National	Service Industries, Inc., and president	
25	of the Nati	onal Linen Service Division.	
1	" 		4
	Q	Do you have an office here in Atlanta?	•
2	A	Yes.	
3	Q	And what is the address of that office?	
4	A	1180 Peachtree Street, N. E., Atlanta.	

Excerpts from Deposition of Harvey Jacobson

Q And did you purchase more than one?

A No.

Q Do you have that note with you?

A Yes.

MR. McKENNA: Let the record note that Mr. Gibert has just handed me a note, which he obtained from the witness, and I would like to have it deemed marked Exhibit 22 for identification on this series of depositions.

The note being entitled "D-Z Investment Company, 6 percent promissory note
due March 31, 1975", in the face amount of
\$50,000, with the date of 30 April, 1974,
and payable -- well, made out to the order
of Harvey Jacobson, and request that this
be deemed marked, and that we have a copy
made, which will be physically marked under
the same agreement that the other notes were
marked.

Q (By Mr. McKenna) Mr. Jacobson, I show you the note which is deemed Exhibit 22 for identification and ask you if you acquired that note on the date indicated on the face thereof, namely, 30 April, 1974.

 $\begin{array}{c} \text{A} \quad 1596 \\ \text{Excerpts from Deposition of Harvey Jacobson} \end{array}$

1 A Yes. ·

Excerpts from Deposition of Harvey Jacobson

1	Q And how did you come to acquire that note
2	on that day?
3	A Mr. Zimmerman came over to my house and
4	brought it to me.
5	· Q And did you give him a check for the note?
6	A Yes.
7	Q At the same time?
8	A Yes.
9	Q At that time, did you execute any other
10	documents in any way related to this note? I'm talking
11	about, now, just at the time that Mr. Zimmerman delivered
12	to your house, and you gave him a check for the note.
13	A I think that was the only thing I signed at
14	that point.
15	Q Have you ever signed any other document in
16	conjunction with your acquisition of that note?
17	A There was a request for some financial
18	information that a questionnaire that I was asked
19	to complete.
20	Q Do you have that questionnaire?
21	A I sent the questionnaire in. All I have
22	is the letter saying
23	Q Could you produce the letter, please?
24	I'd like to have marked as Exhibit 23 for
25	identification the letter the witness has just handed

	A 1598
1	me, which is on the letterhead of D-Z Investment Company
2	dated June 11, 1974, and addressed to Mr. Harvey
3	Jacobson, and purportedly bearing the signatures of
4	both Bruce R. Davis and Jerome Zimmerman.
5 6	(Thereupon, the court reporter marked Exhibit 23 for identification.)
7	THE WITNESS: Yes, it was the
8	certificate of purchase order.
9	Q (By Mr. McKenna) Mr. Gibert has just
10	pointed out that as an exhibit to the document?
11	A This is the whole packet that I got. This
12	is just a blank.
13	Q The witness has just handed me a copy of
14	the private placement memorandum, dated April 24, 1974,
15	entitled, "D-Z Investment private placement memorandum,"
16	et cetera, which I request the reporter mark as Exhibit
17	24 for identification.
18	(Thereupon, the court reporter marked Exhibit 24 to the deposi-
19 20	tion of Mr. Jacobson for identi- fication.)
20	MR. GIBERT: Excuse me, Mr. McKenna,
22	should I get the original note copied now?
23	MR. McKENNA: Yes, I'd appreciate it.
23	MR. GIBERT: Or do you want to ask

any questions about it now?

MR. McKENNA: Yes, I would appreciate

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Excerpts from Deposition of Harvey Jacobson 8 1 getting it marked, if we may, so we don't 2 forget it. 3 To save time while the reporter will 4 be marking exhibits, were you served with 5 a subpoena in this action? 6 THE WITNESS: Yes. 7 Q (By Mr. McKenna) And did that subpoena 8 have appended to it a notice listing certain documents 9 you were requested to produce? 10 A Yes. 11 Q Did you review that notice at the time? 12 Yes. And have you attempted to pull together all 13 Q of the documents which you understood to be covered by 14 that notice? 15 I brought everything that related to this 16 situation. 17 Q When you say "situation," you mean D-Z 18 Investment Company? 19 D-Z Investment Company. 20 Q Have you brought anything that related to 21 NJB Prime Investors? 22 Yes. 23 Q May I request all of those documents be

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produced at this time?

Excerpts from Deposition of Harvey Jacobson

MR. GIBERT: That's all right with me. Let me look at them since you have described them. You want the folder?

Let the record note that the witness has handed Mr. Gibert a folder which Mr. Gibert has handed me, and I'd like to just briefly describe the contents.

One document being a subpoena issued from the Northern District of Georgia, addressed to Harvey Jacobson, and dated July 9th, with the notice of deposition, dated July 5 annexed thereto.

A letter of July 10, 1974, on the letterhead of Wachtell, Lipton, Rosen and Katz, and addressed to Mr. Jacobson, and signed by myself.

And a copy of an order to show cause with stay, dated July 9, 1974, which I believe to be referred to in the letter of July 10th.

And a letter of July 12, 1974, on the letterhead of my firm, Wachtell, Lipton, Rosen and Katz, addressed to Harvey Jacobson, signed by Herbert M. Wachtell, which also has stapled to it a copy of a notice of depositions dated July 5, 1974, which appears to be the same notice which is attached to the subpoena.

And it is not my present intention to mark any of these as exhibits since they are all duplicative of other documents.

Excerpts from Deposition of Harvey Jacobson

1	MR. McKENNA: Yes, I do.
2	MR. GIBERT: Are you through with
3	the folder?
4	MR. McKENNA: I'd like to ask the
5	witness some questions, and it may or may
6	not require my use of the folder.
7	Mr. Jacobson, do you have any other
8	documents in your possession, custody or
9	control which in any way relate to D-Z
10	Investment Company or NJB Prime Investors?
11	THE WITNESS: No.

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Q Now, other than the questionnaire which you have testified you received with the letter of June 11, which is Exhibit 23, and which you have testified, as I understand it, you filled out and sent back, do you recall having received any other documents?

A I think I got a --

Q In connection with or relating to D-Z Investment Company?

A I got a letter stating that there was to be a meeting tonight, but I threw the letter away after marking it on my calendar.

MR. GIBERT: Excuse me. He had also testified, I believe, that he filled in the thing on the attachment to the placement memo.

MR. McKENNA: Very well. I will come back to that, but excepting that, also, which you presumably filled out and gave back, you say you -- I show you the folder which you handed to your counsel, who handed it to me, which contained these documents that you produced here this morning, and it is entitled, or has written on it on the lip, D-Z Investment Co. or

Excerpts from Deposition of Harvey Jacobson

Invest. Co., can you tell me who put that writing on that folder?

THE WITNESS: I did.

Q (By Mr. McKenna) And when did you put that on there?

A Oh, I guess the day after I got the note and the private placement information and so forth, so that I could keep it orderly.

Q So you have maintained a file, so to speak, in this folder since you -- at least since you acquired the note?

A Correct.

Q Now, you testified that you received a letter stating that there was a meeting to be held tonight. To your knowledge, is that meeting still on?

A No, I have been informed that it has been cancelled.

Q Cancelled or postponed? Well, has another date been set?

A Not to my knowledge.

Q Were you advised why it was cancelled?

A No, not really, other than that it was indicated -- the impression was it wasn't needed.

Q Who advised you it had been cancelled?

	Excerpts from Deposition of Harvey Jacobson
1	A Mr. Gibert.
2	Q And when did he so advise you?
3	A Lunchtime today.
4	Q I show you the private placement memorandum
5	dated April 24th, 1974, a copy of which is marked as
6	Exhibit 24 to your deposition, and ask you if you can
7	tell me when you received that private placement
8	memorandum, or first received any copy or version
9	thereof.
10	A I saw it prior to April 30th, but I don't
11	know exactly when. I received this April 30th, the
12	same date of the note.
13	Q And is that the first copy that you
14	received for you own possession to keep?
15	A To the best of my knowledge. Now, if I
16	had one, I didn't retain it.
17	Q Do you recall when you saw it prior to
18	that date?
19	A Guessing, about a week.
20	Q So your best recollection is about a week
21	prior to April the 30th?
22	A A week or ten days, in that area.
23	Q Now, when you obtained this copy, did you
24	obtain it from Mr. Zimmerman?

Yes.

	Excerpts from Deposition of Harvey Jacobson
1	Q At the same time you bought the note? 14
9	A Yes.
3	Q Now, you previously testified, when pointed
4	out to your counsel, by your counsel, that you signed
5	a document which I understand you to have been referring
6	to as another copy or version of Exhibit 3 to EBT,
7	Exhibit 24 on your deposition, that Exhibit 3 being
8	a certificate and purchase order. Am I correct in my
9	understanding?
10	A That's correct.
11	Q That your testimony is you did sign such
12	a document?
15	A Yes.
14	Q And when did you sign that?
15	A The same time I signed the note.
16	Q Well, you didn't sign the note, did you?
1.7	A I mean at the same time I gave him got
18	the note of April 30.
19	Q Right. And gave him the \$50,000 check?
20	A That's correct.
21	Q Did you have a copy made of the certificate
22	and purchase order which you signed?
23	A No.
24	Q Did you ever receive a copy after you

signed it?

	Excerp	ts from Deposition of Harvey Jacobson
1	A	No. 15
2	Q	What I am saying was, a copy that was
3	filled out	as opposed to this blank copy?
4		No, this is all I got.
5	Q	Was anybody else present with you when Mr.
6	Zimmerman	delivered the note?
7	A	In the house or
8	Q	No, I mean present in the room with you.
9	A	At the session?
10	Q	At the session, yes.
11	A	No.
12	Q	Did you have any discussion at that time?
13	A	He went over it with me.
14	Q	What did he go over, the note or the
15	private pla	cement memorandum or both?
16	A	Well, the whole packet.
17	Q	The packet consisting of the note and the
18	private pl	acement memorandum?
19	A	That's correct.
20	Q	Anything else?
21	A	No, that's about it.
22	Q	Have any other documents relating to
23	D-Z or	
24	A	No.

Or any other company?

Excerpts from Deposition of Harvey Jacobson

A No.

Q Have any financial statements or anything
like that that he showed you?

A Nc.

	Excerpts from Deposition of Harvey Jacobson
1	Q Any work ups of figures of any kind? 17
2	A No.
3	Q And when you say he went over the private
4	placement memorandum, did you go over it page by page,
5	item by item?
6	A Not that carefully since I had an opportunity
7	to look at it, I didn't.
8	Q At that time, April 30, did he go over any
9	specific item that you can now recall in the private
10	placement memorandum, and if you wish to take a minute
71	to look at it, I put it before you.
12	A We didn't go over anything else in particular.
13	Q You didn't go over anything else in
14	particular, or anything?
15	A I mean anything in particular. He asked
16	about if I had any questions concerning it.
17	Q And did you?
18	A No.
19	Q Not at that time?
20	A No.
21	Q Mr. Jacobson, when did you first hear of
22	either D-Z Investment Company or the investment oppor-
23	tunity which ultimately came to be known as D-Z
24	Investmen Company?

As I said, it was approximately ten days or

Excerpts from Deposition of Harvey Jacobson 18 1 so prior to my deciding to participate. 2 You are referring to the same meeting or 3 communication you had at which you received or first saw the private placement memorandum, which is Exhibit 5 247 6 That is correct. 7 And how did you come to have this first --0 well, from whom -- withdraw the question. 8 9 From whom did you first learn of this? 10 Mr. Zimmerman. A How did you first learn of it? 11 Q He called me and told me he had an investment 12 that he thought might be of interest to me since we had 13 made previous investments together. 14 Did he say that on the phone, "Since we have 15 made previous investments"? 16 No, he didn't say. I don't remember his 17 exact words. 18 I'm not asking in exact words, but did he 19 says, "Harvey, I have an investment opportunity similar 20 or like I have had for you before," or something to that 21 effect, or, "You might be interested in it like you have 22 been interested in the others"? 23

I don't think he had to add the last --

Okay. Were you going to say something?

24

25

Q

	Excerpts from Deposition of Harvey Jacobson
1	MR. MARSHALL: No. I was going to 19
2 ·	object to the manner in which you were
3	suggesting a dialogue to the witness, but
4	he answered the question already.
5	Q (By Mr. McKenna) You first heard of it when
6	you received a telephone call from Mr. Zimmerman?
7	A I didn't hear of the fact that there was an
8	opportunity. I didn't know what the opportunity was.
9	Q And do you know when that telephone conversa-
10	tion was?
11	A No. Might have been a week prior to the
12	time he came to see me.
13	Q I'm sorry, your voice dropped off.
14	A I said, it might have been a week prior to
15	the time he actually came to see me.
16	Q And what did he say to you in that telephone
17	conversation, and what did you say to him?
18	A I don't remember the exact conversation.
19	Q Did he say anything other than what you
20	have just indicated?
21	A Not really, or we are very close personal
22	friends. We might have talked about other things, but
23	I don't remember anything relating to this.
24	Q As a result of that, did you make an appoint

ment to meet with Mr. Zimmerman to discuss it further?

Excerpts from Deposition of Harvey Jacobson

1	A He said he would call me later and arrange 20
2	to come see me when the time was convenient for both of
3	us.
4	Q And did he do so?
5	A Yes.
6	Q So it was a second telephone conversation?
7	A Just prior to coming up.
8	Q Same day?
9	A Maybe a day or so.
10	Q And he came up to your office?
11	A Yes.
12	Q And was anybody else present when you met
13	with him on that occasion?
14	A No.
15	Q Do you have a calendar or an appointment
16	diary or anything on which you record dates of your
17	appointments?
18	A I do, but I tear them out after the date
19	each day and throw it away.
20	Q Are you telling me now that you are certain
21	that you do not presently have in your possession,
22	custody or control such a diary entry which would
23	indicate the day you met with Mr. Zimmerman?
	A That's correct It indicates from today

on, nothing backwards.

	Exce	rpts from Deposition of Harvey Jacobson
1	Q	Other than this meeting that you had in 21
2	your office	with Mr. Zimmerman and the meeting at your
3	home when h	e delivered the note, did you have any
4	meetings in	between those two dates on this subject?
5	` 🛦	No.
6	Q	Did you have any communications on the
7	subject?	
8	A	Not to my knowledge.
9	Q	Did you make a decision at that meeting to
10	take advant	age of the investment opportunity and
ıı	purchase th	e note?
12	A	No.
3	Q	Did you make a decision after the meeting?
4	A	Yes.
15	Q	How long after the meeting did you make
16	the decisio	n?
17	A	Few days.
8	Q	And did you notify Mr. Zimmerman of that
9	decision?	
0	A .	Yes.
1	Q	How did you notify him?
2	A ~	Must have
3	Q	You did have a communication with him. Tell
4	him?	
5	A	No. As I say, we see each other socially,

Excerpts from Deposition of Harvey Jacobson 22 1 so I might have just said -- in fact, all I did -- I 2 think I said, "I'm ready to go forward with you. When 3 do you want the money?" 4 And he said, "As quickly as possible. 5 about tomorrow?" 6 And I think I said, "Fine." 7 And then he came to your house as a result Q 8 of that? That's right. 9 There was no extensive discussion about the Q 10 11 subject matter? No. 12 Did you ever discuss your purchase of the 13 Q note of D-Z Investment Company with anybody else you 14 know to be affiliated with D-Z? 15 Yes. A 16 Who? Q 17 Mr. Levison. 18 Q And what do you understand to be his 19 affiliation with D-Z? 20 Well, I think he represents either Jerome 21 or the company, I'm not sure. 22 Q You mean as attorney? 23 A Yes. 24

Q

25

And when did you discuss it with Mr. Levison?

Excerpts from Deposition of Harvey Jacobson

22a

A Right after Mr. Zimmerman left my office.

You.

Is Mr. Levison also your own personal

A Yes.

Q

attorney?

MR. LEVISON: We got the town covered, I believe.

Q (By Mr. McKenna) Tell me in words or substance what was said between Mr. Zimmerman and yourself at the meeting, at your office when he first came over with the private placement memorandum and discussed the nature of the investment opportunity.

A He indicated that he thought this was an opportunity for us to invest and make some money, and that he could only talk about it in general terms because he wasn't in a position to reveal the name of the company that they hoped to acquire a large portion in or take over, hopefully, and that it had been investigated by him and Bruce Davis and Mr. Levison, and that having been involved with him in investments in the past, he was very excited about this one and thought this was one that I would be interested in.

- Q Anything else?
- A That was really the gist of it.
- Q Well, did he describe the nature of the investment you would be asked to make?
 - A Yes, that it was an REIT that was traded

on the American Exchange, that it was selling

appreciably for below book value. That -- what else

did he say? That he was attempting to raise enough

money to hopefully get about a 20 percent position in

the company. He was personally investing some money

in it. That was basically it.

Q Did he, in fact, mention in that conversation that it was the intent of himself and his associate in this venture to gain control of an REIT?

position where the -- whether they would involve themselves in the management, that he and his associate he felt, had expertise in this direction and that it would enhance the company and that hopefully we would make some money out of it.

Q You said he and his associate. Did he identify the associate?

A Bruce Davis.

Q Well, did he identify the nature of the investment you were being asked to make?

A Well, he was asking me to, in effect, loan money so that they could develop this private placement, and that ultimately, hopefully, \$45,000 would be as a note and the 5,000 would go as stock on the company that would be set up.

Excerpts from Deposition of Harvey Jacobson

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Q Did he indicate how this would be done, 25 you mean -- withdraw the question.

Do you mean that he indicated that the investment that you would make initially would be converted into a package of 45 and 5, as you have testified?

A No, hopefully -- hopefully as pretty well spelled out in the private placement.

Q Did he indicate to you -- well, was it your understanding, based upon what he told you, that you would have an opportunity or a right of first refusal or first option to obtain this package of 45 and 5 that you have described?

A Yeah, I think that's correct.

MR. MARSHALL: Excuse me. Would you read back that question and answer, please?

(The question and answer were read back by the reporter.)

MR. MARSHALL: I object to the question because it contains so many different elements, an opportunity, a right of first refusal, but the witness has answered it, if you are content with the answer, so am I.

Q (By Mr. McKenna) What did Mr. Zimmerman state to you upon which you based that understanding,

	A 1618
	Excerpts from Deposition of Harvey Jacobson
1	in words or substance?
2	A I really would have to refer back to the
3	package.
4	MR. MARSHALL: I am going to object
5	at this point. When you say "this under-
6	standing", which understanding are we
7	talking about?
8	MR. McKENNA: He just testified yes,
9	he had.
10	MR. MARSHALL: He also testified by
11	using the word "hopefully."
12	MR. McKENNA: I am just taking the
13	last question and answer, that's all, that's
14	all.
15	MR. MARSHALL: Yes, but I just objected
16	to your last question and answer.
17	MR. McKENNA: Fine.
18	MR. MARSHALL: Because of the various
19	elements it contained, and I am suggesting
20	to you, when you talk about his understanding,
21	you describe or define it a little more
22	expressly than your last question did.
23	MR. McKENNA: I would like to leave
24	it the way my last question did, and since

the witness answered yes, I would like to

know the basis of that understanding.

MR. MARSHALL: It is unclear to me which element he answered yes to, but that is why I said, if you are content to accept that answer, all I can do is suggest that for the sake of the record you clarify your question.

MR. GIBERT: I believe he answered your last question.

(Discussion was had off the record.)

(Thereupon, the question and answer were read by the reporter.)

Q (By Mr. McKenna) Well, had you finished your answer?

A No, I said I really would have to refer back to the package to refresh my memory as to exactly what was said.

Q Please do so.

A Because really he pretty well went along explaining what was said and what was written here.

"Business activity of the company," and then he went on, on page 7 under "Issue of units under small issue registration," we read that together.

Excerpts from Deposition of Harvey Jacobson

	Excerpts from Deposition of harvey taccoson
1	Q And you discussed that with Mr. Zimmerman, 28
2	or he discussed it with you?
3	A Just briefly, just pretty much as it states
4	here.
5	Q But based upon reading that and your
6	discussion with him, was it your understanding that
7	you would have first crack in any shape or form at these
8	units if you made the investment in the note?
9	MR. MARSHALL: I object. What
10	does "first crack" mean?
11	Q (By Mr. McKenna) In any shape or form. I'm
12	using it colloquially, covering right of first refusal
13	that it would be offered to you first as opposed to you
14	and other note purchasers as opposed to total outsiders,
15	or what.
16	MR. MARSHALL: I'm going to object.
17	Q (By Mr. McKenna) What was your understandin
18	with respect to what your rights would be with respect
19	to obtaining this package which is described on page
20	seven and thereafter?
21	MR. MARSHALL: I have no objection

THE WITNESS: I don't know that he promised me anything other than that this was the hope that the -- that this was

to that question.

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	Excerpts from Deposition of Harvey Jacobson
1	what the company would accomplish. I
2	don't remember.
3	Q (By Mr. McKenna) It was the hope that the
4	company would be able to issue this package?
5	A Right.
6	Q Did he say with respect to what your rights
7	would be?
8	A I don't know.
9	Q This package?
10	A I don't remember, frankly.
11	Q But it was your understanding, nonetheless,
12	that you would have an opportunity to obtain this package
13	A I think so, yes, that if anything every-
14	thing went according to plan, that this package would
15	be presented.
16	Q Did you question Mr. Zimmerman as to why
17	it was not in writing specifically as to what your
18	rights would be to obtain with respect to obtaining
19	this package?
20	A No, I
21	MR. GIBERT: Excuse me. He hasn't
22	testified as to any rights, I don't believe.
23	I don't think he testified to any rights.
24	Q (By Mr. McKenna) Well, as to whatever

opportunities you would have, did you question Mr.

	H 1044
	Excerpts from Deposition of Harvey Jacobson
1	Zimmerman as to why there was nothing in writing
2	indicating that the initial note purchasers would have
3	a first opportunity to obtain these packages which they
4	intended
5	A I did not question him.
6	Q Was there mentioned the amount of the note
7	that you would have to purchase?
8	A \$50,000.
9	Q And the interest rate?
10	A Six percent.
11	Q Did you question why the low interest rate?
12	A No.
13	Q Was there any discussion about the interest
14	rate?
15	A Not really. I figured the interest was
16	incidental to the hope for the investment itself, that
17	the interest really didn't mean that wasn't that
18	much wasn't that important to me at the time.
19	Q You said the hope for the investment itself.
20	What investment are you talking about?
21	A The ultimate purpose of the company would
22	be fulfilled and, therefore, we would enhance our invest-

How would your investment be enhanced as a

note holder? You mean by obtaining this package that

23

24

prime interest to them.

	Excerpts from Deposition of Harvey Jacobson
1	Q And when did he reveal it to you? 32
2	A Oh, it was sometime after I got the signed
3	the note.
4	Q And how?
5	A Verbally. I asked him.
6	Q Do you recall how much after you got the
7	note that was, days, weeks?
8	A I think he told me at the time I signed the
9	note that he had to wait a few days, I don't remember
10	exactly, before he could reveal it, and to call him
11	then and he would let me know, or I would see him. And
12	I saw him, I asked him could he tell me now. And he
13	said yes.
14	Q Within a few days?
15	A Yes.
16	Q Now, you testified that the company, or the
17	REIT that they were interested in had been that Mr.
18	Zimmerman indicated had been investigated by Bruce Davis
19	and by Mr. Levison, is that correct?
20	A Yes.
21	Q Did he say the
22	MR. GIBERT: Excuse me. He doesn't
23	take down nods.
24	THE WITNESS: Yes.
25	Q (By Mr. McKenna) Did he say that the

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Excerpts from Deposition of Harvey Jacobson 33 specific ones that they were interested in had been investigated by Mr. Davis and Mr. Levison? He said there were about four that they investigated. I assumed that the one that we finally ended up having an interest in was included in the four. Did he indicate that both he and Mr. Davis Q had investigated all of the ones though? I'm sorry, Mr. Davis and Mr. Levison had --He and Mr. Davis implied more that he and A Mr. Davis had investigated them all. I don't know at what point Mr. Levison was involved in the investigation. What did he say about Mr. Levison's parti-Q cipation in the investigation? I asked him was Jarvin familiar with this in general. And he said, yes. And I said then I intended to talk to him about it. He said, "By all means, do so," that he knew about it. And anything further that you discussed Q on that meeting with Mr. Zimmerman? Not in regard to this.

In regard -- when you say "this," you mean

the investment in D-Z Investment Company?

Excerpts from Deposition of Harvey Jacobson

1	A That's correct.
2	Q Now, you testified previously you discussed
3	it with Mr. Levison after Mr. Zimmerman left your office
4	A That's correct.
5	Q Did you call Mr. Levison?
6	A Yes.
7	Q And did you call him as your attorney, or
8	did you call him to find out what in the way of
9	investment advice?
10	A More as an attorney. Both. You know, you
11	don't go through your mind why you call a man. I called
12	him because I wanted some information.
13	Q Did you call him because Mr. Zimmerman had
14	indicated that he had studied the matter and was familia:
15	with it?
	A Cold be use femiliar with it

Excerpts from Deposition of Harvey Jacobson 35 1 I will ask you what did you say to Mr. 2 Levison and what did he say to you in that conversation 3 MR. GIBERT: And I instruct the witness 4 not to answer it. 5 MR. McKENNA: Grounds? I assume you 6 want to --7 MR. GIBERT: On the grounds it is 8 attorney-client privilege. He has testified 9 Mr. Levison is his attorney. 10 (By Mr. McKenna) I asked this question 11 because I have grave doubts, to say the least, that 12 this is really a privileged conversation, but because 13 I think it was more in the nature of a common person. 14 who was known by both of these people who was questioned 15 about what he knew about the investment opportunity, 16 as opposed to legal advice, but I will reserve on that. 17 MR. LEVISON: I resent the characteriza-18 tion of being a common person. 19 MR. McKENNA: No comment. 20 MR. LEVISON: I resent it even more. 21 MR. McKENNA: I meant comment 22 obviously only in the sense of mutually, 23 but if you took it some other way I am 24sorry.

(By Mr. McKenna) Can you tell me how long

(By Mr. McKenna) I am just asking you for " your best recollection, not to give me a precise --I mean you can, if you can tell me whether it was a

matter of a few minutes or whether it was a half hour

or something.

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It was not a half hour.

In your meeting with Mr. Zimmerman, did you question the reason that he could not identify the REIT that they were interested in?

I didn't question it. He volunteered it, that it wasn't permissible under the SEC regulations.

Did he specify any regulations, the nature Q of any regulations?

Not really. He just -- I took his word

Excerpts from Deposition of Harvey Jacobson 37 1 for it that he couldn't do it and accepted it. 2 At or prior to the time you purchased the 3 note, were you informed as to what it was intended 4 would be done with the REIT once control was obtained, 5 if it was obtained? 6 Repeat that. 7 Q Would you read back the question? 8 (The question was read by the reporter.) 9 (By the witness) I think the -- it was 10 pretty -- well, he referred me back to the document, 11 placement memorandum, "Use of proceeds from note." 12 The he being Mr. Zimmerman? Q 13 Yes. 14 This was in your first meeting with him? Q 15 Yes. 16 At or prior to the time you purchased the 17 note, were you ever informed as to whether or not it 18 was intended or contemplated that the REIT that was acquired, if it was acquired, would be merged into 19 either D-Z or Security Management Company? 20 I think that was also spelled out in this 21 one of these documents. 22 And would you tell me where, specifically? Q 23 MR. MARSHALL: Let the record reflect 24

that the witness is referring to the private

	Excerpts from Deposition of Harvey Jacobson
1	placement memorandum, which is Exhibit 23.
2	Am I correct?
3	MR. McKENNA: No, I believe it is 24.
4	MR. MARSHALL: I apologize, Exhibit 24.
5	MR. McKENNA: Not only in this present
6	answer, but in the prior answer.
7	MR. MAPSHALL: Yes.
8	THE WITNESS: That's correct, page 6.
9	(Discussion was had off the record.)
10	MR. MARSHALL: What page was that,
11	Mr. Jacobson?
12	THE WITNESS: Page 6, paragraph 3.
13	Q (By Mr. McKenna) Now, that paragraph state
14.	that the company, which is D-Z, may consider merger
15	into the REIT.
16	MR. GIBERT: If you are going to read
17	it, read it all.
18	MR. MARSHALL: Read it in context.
19	MR. McKENNA: Okay.
20	Q (By Mr. McKenna) Read the statement which
21	you have just referred to, please.
22	A The company, at a subsequent date, may
23	consider the merger into the REIT into which it may
24	acquire a substantial interest or security or both.

The company is not in a position at this date to

state what it will ultimately do in this respect. It is expected that subsequent of proceeds from the notes -- it is expected that substantially all of the proceeds from the issuance --

MR. GIBERT: Excuse me, Mr. Jacobson,

I think he wanted only the paragraph you

referred him to.

MR. McKENNA: Yes, that's all I wanted, what you have indicated so informed you.

- Q (By Mr. McKenna) Now, does that paragraph indicate to you that REIT might be merged into Security Management Company at some point?
 - A No, into D-Z.
 - Q Just into D-Z?
 - A Uh-huh.

Q Were you ever informed that it was considered or contemplated that the REIT might be merged into Security Management Co.?

MR. GIBERT: I believe, gentlemen, that there's some confusion from the last question, since it states quite clearly that the company may consider the merger into the REIT, and your question inverted that, for some reason. I am not sure the

Excerpts from Deposition of Harvey Jacobson 1 witness understood. It was quickly done. 40 2 THE WITNESS: Yeah, I am confused now 3 as to what you are asking. 4 MR. McKENNA: I don't think I had a 5 question pending. 6 MR. GIBERT: Well, what you did --7 MR. McKENNA: You are confused. 8 MR. GIBERT: What you did, you intended 9 to distinguish between D-Z and Security 10 Mortgage --11 MR. McKENNA: Management, yes. 12 MR. GIBERT: Security Management, but 13 when you did, you referred to merging the REIT into D-Z or Security, whereas the 14 15 sentence refers to merging the company into 16 th REIT, not the other way around. THE WITNESS: That's correct. 17 18 0 (By Mr. McKenna) Well, my question really dealt with the situation the other way around, 19 but if the witness understood it, I will gladly amend 20 my question to cover either situation, the merger of 21

one into the other, but I really wanted to distinguish

between the merger with Security and the merger with

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D-Z.

	A 1633
1	Excerpts from Deposition of Harvey Jacobson 41 A To the best of my knowledge, Mr. Zimmerman
2	only. Mr. Zimmerman really referred to it the way it
3	is stated in this paragraph three that I read.
4	Q And only that?
5	A Best of my knowledge.
6	Q Have you ever been informed as to who or
7	whom it is intended by the D-Z management would be
8	appointed as trustees of the REIT if they gained control?
9	A No.
10	Q Are you familiar with the operation of REIT's
11	A In a general way.
12	Q And what is your understanding of their
13	operation?
14	A It's more like a mutual fund that invests
15	in real estate.
16	Q And do you know the nature of the investment
17	they make?
18	A Not that familiar with it.
19	Q Are you familiar with any special tax
20	considerations that apply to REIT's as opposed to other
21	corporations?
22	A No, other than in their payment of dividends
23	that they have to pay out in relation to what they take

in, not necessarily as to how it falls on the bottom

line.

Excerpts from Deposition of Harvey Jacobson

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with the restrictions?

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Do you have an understanding of what would be the result if they did not pay out in accordance

What is your understanding of the --

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A No. I'm not that astute in the operations of REIT's.

Q Have you ever been informed that if fifty percent or more of the stock of an REIT becomes concentrated in the hands of five or less persons, that the REIT would lose special tax considerations which are afforded to it as opposed to other corporations?

A No, I have never been so informed.

Q Have you ever been informed as to the -- withdraw the question.

Do you know who the shareholders are of D-Z Investment Company?

A Yes.

Q And who are they?

A Jerome Zimmerman, Security Mortgage -- or Security whatever they call it.

Q You may refer to the document. I believe if you will look at the first page it --

A Security Management, Jerome Zimmerman, and there is six of us, Harold Levow, Max Sophier, Harold

	Excerpts from Deposition of Harvey Jacobson
1	Levin, Dr. Harold Levin, Seymour Weinburg and myself.
2	Q Do you understand they are stockholders
3	in the company?
4	A No, not
5	Q I mean
6	A I'm sorry, I misunderstood.
7	Q Fine. Do you know who the holders are of
8	the common stock of D-Z as opposed to any (f its notes?
9	A The capital stock is stated as owned by
10	Security Management Company and Mr. Jerome Zimmerman.
11	Q And you are referring now to Exhibit 24, the
12	private placement memorandum?
13	A Right, right.
14	Q Have you ever been informed as to what Mr.
15	Zimmerman and Security Management paid for the stock
16	which that document indicates they received?
17	A Yes.
18	Q And when were you so informed?
19	A I think Mr. Zimmerman mentioned it when we
20	first talked about it, plus I was informed later, but I
21	don't recall exactly.
22	Q You think Mr. Zimmerman
23	A I know he mentioned it initially, but I'm
24	trying to remember which time. I don't remember. The

	Excerpts from Deposition of Harvey Jacobson
1	Q You don't remember whether it was the first
2	meeting or the time he brought you
3	A I don't remember that, really.
4	Q Did he volunteer it or did you ask him?
5	A No, he volunteered it.
6	Q Do you recall what it was?
7	A You talking about D-Z?
8	Q No, what Mr. Zimmerman and Security Manage-
9	ment paid for their shares of D-Z, not their notes, but
10	their shares of D-Z stock.
11	A Let's see, I think it was \$100 a share.
12	Q And you stated it was also mentioned to you
13	recently. When was that?
14	MR. GIBERT: I think he said later.
15	Q (By Mr. McKenna) I'm sorry. More recently,
16	whatever the word was.
17	A Yes.
18	Q When was that?
19	A I don't remember, really. It was in conver-
20	sation with I think some of the other note holders.
21	Q And when did you have that conversation?
22	A I don't know, I really don't know.
23	Q In the last week?
24	A Oh, no, prior to that.
	And who did you have the convergation with?

1	Excerpts from Deposition of Harvey Jacobson A It could have been any of the other note 45
2	holders because I am personal friends with most of them,
3	and I just don't remember.
4	Q Which ones are you personal friends with?
5	A Dr. Weinburg, Dr. Levin, Max Sophier. I
6	know Bernie Kroll. I know them all.
7	Q Who else?
8	A Harold Levow. It wasn't Harold Levow.
9	Could have been any of the others. It couldn't have
10	been Harold Levow because I haven't seen him in a long
11	time.
12	Q And Dr. Feinman?
13	A I don't know him.
14	Q You don't know Dr. Feinman?
15	A I don't know Dr. Feinman. Ronnie Feinman?
16	Sure, I know him. He's my wife's dentist. I didn't
17	remember his name being on here. ' didn't talk to him
18	about it.
19	Q Do you recall any one of these other
20	gentlemen that you have mentioned having specifically
21	been present at this discussion?
22	A No. I think it took place in a cocktail
23	party, and I frankly couldn't tell you.

I don't remember.

Q

24

Do you recall if Dr. Levin was present?

	A 1000
_	Excerpts from Deposition of Harvey Jacobson
1	Q Mr. Sophier?
2	A I do to a lot of parties.
3	Q I'm just asking you your best recollection.
4	A I just can't remember, you know. This
5	thing is not that important. The whole deal isn't that
6	big to me that I gave it that much thought.
7	Q Mr. Kroll?
8	A I see Mr. Kroll at the club.
9	Q No, I'm asking, do you recall whether he was
10	involved in this discussion?
11	A I don't remember. I really don't. I'm not
12	trying to hedge.
13	MR. GIBERT: He has testified
14	MR. McKENNA: I am asking
15	MR. GIBERT: he knows who they
16	all are. He knows them personally. He
17	does not remember. Now, I
18	MR. McKENNA: I am entitled to ask
19	him each one to see if that maybe will
20	tick off something that will make him
21	remember, and that's what I am trying
22	to do. And if he can't remember, fine.
23	THE WITNESS: I cannot remember.
24	Q (By Mr. McKenna) All right. Do you remember

what was said about the price of the stock at that

	Excerpts from Deposition of Harvey Jacobson
1	occasion?
2	A No, I don't remember.
3	Q Can you fix when that discussion was in
4	terms of when you were served with the subpoena?
5	A Oh, it was prior to that.
6	Q Can you fix it in terms of when you purchased
7	the note?
8	A It was after that. Sometime between the
9	time you purchased the note and before the subpoena.
10	Q You don't recall what was discussed?
11	A It was in the month of May.
12	Q Did you ever receive any documents which
13	indicated in any manner, shape or form the financial
14	condition or status of D-Z Investment Company?
15	A No.
16	Q Did you ever receive any such documents
17	with respect to NJB Prime Investors?
18	A No, only what I have read in the Wall Street
19	Journal.
20	Q You have never received any documents from
21	D-Z or Mr. Zimmerman or Mr. Davis or Mr. Becker?
22	A No.
23	Q Have you ever received any documents concerning
24	the financial condition of Security Management Company?
	A . No.

Excerpts from Deposition of Harvey Jacobson

1	Q I show you Exhibit 23 for identification,
2	which is the letter which, as I recall, forwarded the
3	proxy questionnaire.
4	A Correct.
5	Q And as I recall your testimony, you
6	completed that questionnaire and sent it back?
7	A Yes.
8	Q And whom did you send it to?
9	A To this address, 420 14th Street, Northwest.
10	My secretary mailed it back.
11	Q At or before the time that you filled out
12	the questionnaire, did you discuss the questionnaire
13	with anybody?
14	A No.
15	Q Did you have any discussions with Mr.
16	Zimmerman or anyone else whom you knew to be affiliated
17	with D-Z concerning the purpose of the questionnaire?
18	I'm talking about either before or after the fact.

Excerpts from Deposition of Harvey Jacobson 1 Yeah, Mr. Zimmerman and I talked about it. A 2 And when was that? Q 3 I think it was right after -- when I received it, I think, I asied him -- well, how urgent 5 this was, and he said please get it back as quickly 6 as possible. 7 Anything further? Q 8 I don't remember the questionnaire, my question, and I am trying to remember. There was a 9 question I might have had on one or two of the questions 10 on it, but I don't remember it. 11 While I look for a copy, do you recall 12 Q having any discussion with him as to the purpose of 13 the questionnaire, as to why you had to complete the 14 15 questionnaire? Let me see the letter transmitting that. 16 Yeah, if you would prefer, I will try 17 to find a copy of the questionnaire. 18 Yeah, would you please? Yeah, he said it 19 was concerning a proxy solicitation. There was some 20

legal requirement concerning the proxy solicitation,

Were you a shareholder then of NJB Prime?

Have you ever been? Q

No, nor am I now.

the best I can remember.

Q

A

21

22

23

24

A

No.

-17

(Thereupon, & recess was had.)

- Q (By Mr. McKenna) I believe prior to our break, in response to the question before last, Mr. Jacobson, you had indicated that if you saw the proxy questionnaire, that it might jog your memory as to some question or something you raised with Mr. Zimmerman.
 - A You asked me -- well --
- Q I'm sorry, I don't recall exactly the question that I asked, but I remembered you said if you saw it, it might refresh your recollection about something, and so I did put it in front of you during the recess and my question, did it refresh your recollection?
 - A Go back to the question.
 - MR. GIBERT: We don't know what it was supposed to refresh his recollection about.

(Thereupon, a part of the questions and answers were read by the reporter.)

Q (By Mr. McKenna) My question was really the one before that, which you indicated that if you saw the questionnaire you might remember some question you had raised with Mr. Zimmerman. I ask you, having

looked at the questionnaire, do you recall any question you raised with Mr. Zimmerman or any other discussion you had with Mr. Zimmerman about any item or items in the questionnaire?

A No, I think that -- I don't remember what I asked him about, frankly, on the thing, other than the timing.

Excerpts from Deposition of Harvey Jacobson

Q	Do you remember	that you	did ask him	a 5
question	but you just don't	remember	what it was	about?
A	Possibly.			

MR. MARSHALL: I think the record should reflect, Mr. McKenna, since we referred to it, or you referred to it as a proxy questionnaire, that the document you were making reference to is entitled, "NJB Prime Investors Questionnaire as of May 31, 1974, in connection with proposed proxy solicitation."

MR. McKENNA: I have been using "proxy questionnaire," for the short form. The document indicates what it is entitled, and we have referred to it by exhibit number.

MR. GIBERT: Excuse me. While we are on the subject --

MR. McKENNA: Are you missing a page?

Off the record.

(Thereupon, an off the record discussion was had.)

Q (By Mr. McKenna) Mr. Jacobson, did you make or have made a copy of the questionnaire, a copy of which is marked as Exhibit 9 on Mr. Kroll's deposition?

A Did I make a copy?

	Excerpts from Deposition of Harvey Jacobson
1	Q Did you have a copy did you make a copy 53
2	or have made by your secretary or anybody else in
3	your office
4	A No.
5	Q a copy of the constionnaire after you
6	had completed it?
7	A No.
8	Q Have you ever been info med that D-Z
9	Investment Company has, since the annual meeting of
10	NJB Prime has been held in the past, that D-Z Investment
11	Company has either directly or indirectly been soliciting
12	or seeking to obtain consents from other NJB shareholders
13	for the call of a special meeting of NJB Prime?
14	A I have no knowledge of this.
15	Q What was the source of your funds to purchase
16	the \$50,000 note?
17	A Bank loan.
18	Q And what bank did you borrow those funds
19	from?
20	A Citizens and Southern.
21	Q And was that luan collateralized?
22	A No.
23	Q Did you execute any notes in connection
24	with that loan?

I wish I could do it without it.

Excerpts from Deposition of Harvey Jacobson

1	are not that Southern down here.
2	Q What interest rate are you paying on that
3	loan?
4	A Am I required to answer that, the interest
5	rate I have to pay?
6	MR. GIBERT: I guess that's
7	relevant. I guess so.
8	THE WITNESS: About ten percent.
9	Q (By Mr. McKenna) Did you maintain or
10	retain a copy of the note you executed in connection
11	with that loan?
12	A Yes. Oh, copy of the note?
13	Q Copy of the note.
14	A No.
15	Q Were there any other documents which you
16	signed or prepared in connection with that loan?

	, , , , , , , , , , , , , , , , , , , ,	55
1	A	Financial statement.
2	Q	Then I would call for a copy of that
3	financial st	atement, as I did with Mr. Kroll.
4		MR. GIBERT: I don't have a copy
5	of it	here. Will you furnish me a copy
6	of it?	
7		THE WITNESS: (Nodding affirmatively.)
8	Q	(By Mr. McKenna) Did you ever inform Mr.
9	Zimmerman th	nat you borrowed the money to pay for the
10	6 percent pr	comissory note which you purchased from
11	D-Z Investme	ent Company?
12	A	I doubt it. I might have, I don't know.
13	Q	You don't recall having informed him?
14	A	No.
15	Q	Did he ever ask you?
16	A	It wouldn't have been politicant, no.
17	Q	Well, I didn't ask you whether it was
18	relevant.	
19	A	Well, I don't think we discussed where I
20	got my mone	y•
21	Q ·	Did Mr. Zimmerman request did you give
22	him a fina	ncial statement?
23	A	No.
		In account on with your nurchase of the

Δ 1648

	7 1010
	Excerpts from Deposition of Harvey Jacobson
1	A No.
2	Q Did you make any notes or memoranda of
3	your any of your meetings with Mr. Zimmerman, in
4	which you discussed D-Z Investment Company?
5	A No.
6	Q Did you ever suggest to Mr. Zimmerman
7	other persons whom you knew who might be potentially
8	interested in purchasing a note of D-Z or making the
9	investment that you made?
10	A No.
11	Q Did you ever discuss this investment with
12	others other than those that you know know to be
13	note holders?
14	A Yes.
15	Q With whom did you discuss it, and other
16	than Mr. Zimmerman and Mr. Levison and Mr. Davis?
17	A One other, Mr. Gordon Sugarman, former
18	partner of Mr. Levison, who is now our house counsel.
19	No, he isn't, he was. He went to he at one time
20	was our corporate secretary, he is now group vice
21	president.
22	Q And when did you discuss it with Mr.
23	Sugarman?

Did you discuss it -- was your discussion Q

The same day that I called Mr. Levison.

Δ 1649

Excerpts from Deposition of Harvey Jacobson

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in the nature of asking him if he would be interested in purchasing a note?

A No, not really, more of a question of friend and counsel

Q In other words, your obtaining counsel as to whether or not you should purchase the note?

A That is it.

Q Do you have any knowledge or information concerning any other persons who have been approached concerning purchasing a note or making any investment in D-Z Investment Company, other than those who you now know to have purchased such notes, and other than Mr. -- well, other notes.

A No.

Q Other than this particular investment, have you ever loaned money for the purpose of purchasing stock, that is, the proceeds of which would be used for purchasing stock?

A Say that again now.

Q Other than -- you, in effect, purchased the note of D-Z Investment Company by virtue of which you loaned money to D-Z?

A Right.

Q And which you understand they are utilizing to purchase stock of NJB Prime, is that correct?

Excerpts from Deposition of Harvey Jacobson

1	A (Nodding affirmatively.)	58
2	Q Have you ever, prior to this particular	
3	situation, loaned money, the proceeds of which you	
4	knew was going to be used to purchase stock?	
5	A No, that I would have known to be purcha	sing
6	no.	

	Excerpts from Deposition of Harvey Jacobson
1	Q Have you ever been informed of any amendments
2	to the private placement memorandum, which is Exhibit 24
3	on your deposition?
4	A No.
5	Q Have you ever been informed of any planned
6	amendments?
7	A No.
8 .	Q Have you ever been informed of any changes
9	which have been planned but not reduced to amendments?
10	A No.
11	Q Have you ever been informed of any variance
12	from the terms of that memorandum?
13	A No.
14	Q Or from the terms of the note?
15	A No.
16	Q Have you ever been informed as to the number
17	of shares D-Z has actually purchased of NJB Prime?
18	MR. MARSHALL: As of what point in
19	time are you asking?
20	MR. McKENNA: As of right now.
21	THE WITNESS: I have been given a
22	general guestimate. 120,000, something
23	like that.
24	Q (By Mr. McKenna) When was your most recent
95	discussion with Mr. Zimmerman?

Excerpts from Deposition of Harvey Jacobson

1
A About D-Z?
Q No, at all.
A I saw him a few minutes ago in the hall.
Q And when you saw him a few minutes ago in
the hall, did you discuss D-Z with him?
A Only facetiously. I asked him, "What has
he got me into?"
Q And what did he respond?
A He just laughed. That was about it. Said
he had troubles of his own, and that was about it.
Q Anything else about D-Z?
A No.
Q Prior to that when was your last discussion
with Mr. Zimmerman? Now, I will limit it to the subject
of D-Z.
A I called him to ask him why I got a
certified mail indicating that there was a stay order
when I hadn't gotten any subpoens. I didn't understand
what it was all about.
And he said that I probably would get the
subpoens later and that they would be in touch in an
attempt to explain it to me.
Q He said, "They would be in touch"? Did he
say "they would be in touch"?

Someone would be in touch, he or Mr. Levison,

25

Q

	Exce	erpts from Deposition of Harvey Jacobson
or some		I don't know that he mentioned exactly who. 61
	Q	Have you ever had any discussions with Mr.
Davis (rning your investment in D-Z?
		No.
,		
		Have you ever had any discussions with Mr.
Ralph 1	Becker	concerning D-Z?
4	A	Yes, Ralph called me up to tell me that I
would 1	be get	ting another this last letter from your
firm s	aying	that the deposition was back on.
		(Thereupon, an off the record
	discus	ssion was had.)
	Q	(By Mr. McKenna) Any other discussions
	•	cker about D-Z?
•	A	No.
	Q	How long have you known Mr. Ralph Becker?
	A	Frar since he has lived in Atlanta. I
don't	rememb	ber how many years it is.
	Q	Do you know his brother, Saul Becker?
	A	Saul, yes.
	Q (How long have you known him?
	A	About the same length.
	Q	Did you have any discussions with Saul
Becker	about	t D-Z?
	A	No.

Do you know Mr. Davis?

Excerpts from Deposition of Harvey Jacobson

- 1	
1	A Only met him one time.
2	Q Is that in connection with D-Z?
3	A No, in connection with passing him in the
4	lobby of the Colony Square Office Building, and he was
5	with Mr. Zimmerman, and he just introduced me to him,
6	and that was it.
7	Q Was that before you had your first discussion
8	with Mr. Zimmerman?
9	A Way before.
10	Q Are you aware of any prior business dealings,
11	that is, prior to D-Z, between Mr. Zimmerman and Mr.
12	Davis, or Mr. Davis' company, Security Management?
13	A I'm not aware of them. I know they have
14	had some, but I'm not aware of them.
15	Q You are not aware of any specific one?
16	A No.
17	Q Have you had any discussions with any of the
18	other note holders within the past week?
19	A No. Wait a minute, I talked yes, Dr.
20	Weinburg.
21	Q When did you talk to him?
22	A Oh, one evening we were talking about playing
23	bridge together, and I mentioned about getting the
24	subpoena, and that was about the
	O Any discussion shout the subject matter of

Excerpts from Deposition of Harvey Jacobson

1	the investment?	63
2	A I think I might have asked him how thin	gs
3	were going since I had been out of town. And he sa	1 d
4	he didn't know any more than I did.	
5	Q Any discussion about the subject matter	of
6	6 the lawsuit?	
7	A No.	
8	Q Other than the subpoenas?	
9	A No, other than that one subject.	
	. 11	
1	Q Have you ever been informed, Mr.	64
2	Jacobson, that there's been any non-compliance with	th
3	the terms of either the private placement memorano	dum
4	or the note?	
5	5 No.	

. . .

EXCERPTS FROM DEPOSITION OF SEYMOUR P. WEINBERG

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY. Plaintiff. CIVIL ACTION -V8-NO. 74 Civ. 2379 ROBERT E. HOLLOWAY, MELVIN (IBW) S. TAUB, MAURICE J. BRICK. PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER. DR. GORDON MCKINELY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR. and NJB PRIME INVESTORS.) Defendants.

Deposition of DR. SEYMOUR P. WEINBERG, taken by the Defendants, pursuant to notice and subpoena and the Federal Rules of Civil Procedure, before Forrest M. Brown and Stuart S. Huseby, Court Reporters and Notaries Public, at 2700 First National Bank Tower, Atlanta, Georgia, on the 23rd day of July, 1974, commencing at the hour of 11:20 a.m.

2

Excerpts from Deposition of Seymour P. Weinberg 1 APPEARANCES OF COUNSEL: 2 For the Plaintiff: STEPHEN A. MARSHALL, Esq. 3 For the Individual PETER D. MCKENNA, Esq. Defendants: 4 For the Defendant DAVID PARKER, Esq. 5 NJB Prime Investors: 6 For the Deponent: S. JARVIN LEVISON, Esq. HUGH W. GIBERT, Esq. 7 DAVID ROSS, Esq. 8 9 IT IS HEREBY STIPULATED AND AGREED, 10 by and between the attorneys for the 11 respective parties hereto that filing. 12 sealing and certification be and the 13 same are hereby waived. 14 IT IS FURTHER STIPULATED AND AGREED 15 that all objections, except as to the form 16 of the question, shall be reserved to the time of trial. 17 18

IT IS FURTHER STIPULATED AND AGREED

that the within examination may be subscribed

and sworn to before any notary public with

the same force and effect as though subscribed

and sworn to before this Court.

DR. SEYMOUR P. WEINBERG, being first duly sworn, was examined and deposed as

19

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follows:

Excerpts from Deposition of Seymour P. Weinberg

1		EXAMINATION	3
2	BY MR. McK	enna :	
3	Q .	Would you state your full name, please?	
4	A	Seymour Paul Weinberg.	
5	Q	And what is your residence?	
6	A	769 Old Ivy Road, N. E., Atlanta, Georgia	ı,
7	30341.		
8	Q	And your occupation?	
9	A	Physician.	
10	Q	Any specialization?	
11	A	Obstetrics and gynecology.	

8	Q Let the record note that the witness is
9	showing a or has handed to me a copy of the private
10	placement memorandum of D-Z Investment Company, dated
11	April 24th, 1974 with the same exhibits, I assume
12	or I won't assume, but with an Exhibit 1, 2 and 3
13	annexed thereto, the same as on the prior copies of
14	the same document that we have had marked, and a
15	promissory note entitled "D-Z Investment Company, 6
16	percent promissory note due March 31, 1975, dated
17	8 May, 1974, in the principal amount of \$50,000 and
18	payable to Seymour P. Weinberg," and I would like to
19	have these marked as Exhibits 25 and 26 respectively
20	on this continuing series of depositions. Correction,
21	I would like to have the note deemed marked as Exhibit
22	26, pursuant to our prior agreements, I would request
23	that Mr. Gibert have a copy made, which we will actually
24	mark as the Exhibit so the witness may keep his note.
95	(A document was marked for

25

Excerpts from Deposition of Seymour P. Weinberg

13 * * *

	A .
9	Q And then how about the note which is Exhibit
10	26, did you discuss that with anyhody since you were
11	served with the subpoena?
12	A Yes.
13	Q And who was that?
14	A Dr. Levin.
15	MR. GIBERT: Now, excuse me, before
16	you ask any more questions, may I return
17	to him the original note and give you these?
18	Q (By Mr. McKenna) And when did you have
19	that discussion with Dr. Levin?
20	A On the 15th of July.
21	(Thereupon, the court reporter
22	marked Exhibit 26 to the deposition of Dr. Weinberg for identification.)
23	Q (By Mr. McKenna) I take it you did not,
24	however, discuss the private placement memorandum with
25	him, just the note?

A	Just the note.
Q	And can you tell me how did that discus-
sion come a	bout?
A	We were discussing its merits.
· Q	The merits of the note?
A	Yes.
Q	And what did he what did you say to him
and what di	d he say to you?
A	I said it was a note. And he said, yes, it
is, period.	≱ :″,
Q	That was the totality of the discussion?
A	That was essentially all of the discussion.
Wanted to k	snow if I asked him if he wanted it
discounted	•

	Excerpts	from Deposition of Seymour P. Weinberg
1	Q	You asked him if he wanted to discount 15
2	your note?	
3	A .	No, if he wanted to discount his note.
4	Q	You mean if he wanted to sell you his note
5	at a discou	nt?
6	A	No, if he would be interested in selling
7	it.	
8	Q	If he would be interested in selling it
9	to you?	
10	A	No, just selling it.
11	Q	Selling it, period, at a discount?
12	A	Right.
13	Q	Did you discuss what the discount might
14	be?	
15	A	No.
16	Q	Anything further in the discussion?
17	A -	(Witness shakes head negatively.)
18	•	MR. GIBERT: Don't nod, because the
19		MR. McKENNA: Yes, please.
20		THE WITNESS: No, no.
21	Q	(By Mr. McKenna) Did you discuss the note
22	with anybod	y else during that time frame, namely,
23	since you	were served with the subpoens up until
24	today?	

Excerpts from Deposition of Seymour P. Weinberg

	•	•	
1	Q	With whom?	16
2	A	My wife.	
3	Q	Anybody else?	
4	, 🛦	No.	
5	Q	I don't know that there is a privilege	
6	there, but	I won't ask anyway.	
7		Now, apart from the discussions which	
8	you have te	stified you had, have you reviewed the	
9	note?		
10	A	Yes.	
11	Q .	Which is Exhibit 26, since you were ser	ved
12	with the su	ibpoena?	,
13	A	Yes.	
14	Q	And when did you do that?	
15	A	Last night.	
16	Q	And you read it through carefully?	<i>y</i> -
17	A -	Yes.	
18	Q	And did you discuss it with anybody?	
19	A	No.	
20	Q	Other than that, have you reviewed it	
21	since ru	were served with the subpoena?	
22	A	No.	
23	Q	Did you discuss it with anybody?	
24	A	Yes.	
25	Q	With whom?	

	Excerpts from Deposition of Seymour P. Weinberg
1	A Mr. Gibert.
2	Q Anybody else?
3	A No.
4	Q When did you discuss it with Mr. Gibert,
5	was this at the same meeting?
6	A Same meeting.
7	Q The same thing with respect to your testi-
8	mony on the private placement memorandum?
9	A Correct.
o	Q When did you first hear of D-Z Investment
11	Company or the availability of an opportunity to
12	purchase the note, such as you ultimately did purchase
3	of D-Z Investment Company?
4	A I cannot give you a precise date, but I
15	can tell you that it was after April the 24th. And
6	the reason I can tell you specifically that it was
7	after April 24th is because that was the date on the
18	private placement memorandum that was given to me,
19	so it was after that date.
20	Q And how did you first hear of it?
21	A Mr. Zimmerman contacted me.
22	Q How did he contact you?

A He called me on the telephone and asked me if I was interested in making an investment.

23

24

25

Q Where did he call you, your office or home?

Excerpts from Deposition of Seymour P. Weinberg

1	18
	A Probably at home.
2	Q I don't think I asked you, you have an
3	office here in Atlanta?
4	A Two offices.
5	Q Could you give me the addresses of those?
6	A One office is 610 Medical Arts Building,
7	384 Peachtree Street, N. E., Atlanta, Georgia, 30308.
8	The other office is 4555 North Shallowford Road,
9	Chamblee, Georgia, 30341. I think I should explain
10	at this point, they are not my offices, I am an employe
11	of an incorporation.
12	Q A professional corporation?
13	A Correct.
14	Q How did Mr. Zimmerman contact you?
15	A By telephone.
16	Q And what did he say in that telephone
17	conversation?
18	A Asked me if I was interested in making
19	an investment, and I said I am interested.
20	Q Did he describe the nature of the invest-
21	ment in the telephone conversation?
22	A No.
23	Q What did he say, just are you interested
24	in making an investment, period?
25	A No, when I said that I was interested, we

Excerpts from Deposition of Seymour P. Weinberg

,	II
1 2	set up an appointment.
. 3	Q Did he say anything else at all about the
4	name of the company?
	A No.
5	Q The type of investment?
6	A No.
7	Q The amount?
8	A No.
9	Q Okay. Now, was this telephone conversation
10	itself before April 24th?
11	A No.
,12	Q Or was it after April 24th?
13	A After April 24th.
14	Q And after that telephone conversation, did
15	you, in fact, have a meeting with Mr. Zimmerman?
16	A Yes.
17	Q Can you fix more precisely in relation to
18	April 24th when the telephone conversation was, whether
19	it was a matter of a day, two days, a week, several
20	weeks?
21	A I would say it was probably two days
22	afterward.
23	

24

	Excer	pts from Deposition of Seymour P. Weinberg
1	Q	And you had the meeting with him?
2	A	Yes.
3	Q	And where was that?
4	A	My home.
5	· Q	And when was that meeting?
6	A	Probably about two days after the telephone
7	conversati	on.
8	Q	Did you make any notes or memos at that
9	meeting?	· ·
10	A	No.
11	Q	Did you make any notes or memos of your
12	telephone	conversation with Mr. Zimmerman?
13	A	No.
14	Q	Do you keep an appointment diary or calendar?
15	A	Of a personal nature?
16	Q	In which you would record appointments
17	such as th	ne appointment you made with Mr. Zimmerman.
18	Α.	No.
19	Q	When you said of a personal nature, are you
20	distingui	shing between your medical profession
21	· A	Professional appointments.
22	Q	That is precisely what I meant, personal as
23	opposed to	medical.
24	٨	Correct.
25	Q	Was anybody else present at that meeting

	Excerpts from Deposition of Seymour P. Weinberg
1	with Mr. Zimmerman in your home? When I say present,
2	I mean in the room during the course of the discussion?
3	A No.
4	Q What was discussed at that time? What did
5	Mr. Zimmerman say to you, and what did you say to him,
6	the best you can recollect in words or substance?
7	A In essence it was a discussion concerning
8	that private placement memorandum.
9	Q Which is Exhibit 25?
10	A If that's the number, yes.
11	Q Do you recall anything specifically that
12	was discussed?
13	A We went over the various matters that were
14	in here, and I specifically recall Mr. Zimmerman saying,
15	"I have to go over these with you because this is of
16	importance in following certain procedural matters."
17	And so we went over them.
18	Q Did you go over every item in the memorandum
19	A Page by page.
20	Q As a result of that discussion, did you feel
21	that you understood everything in the memorandum?
22	A I feel I had a pretty good idea of most
23	things that were in this memorandum.
24	Q Did you ask Mr. Zimmerman any questions?

Yes.

Excerpts from Deposition of Seymour P. Weinberg

1	Q Do you recall any specific questions that 22
2	you asked him?
3	A Yes.
4	Q The subject of the questions? What was that?
5	A What REIT was involved.
6	Q What did he respond?
7	A "I cannot answer you that at this point."
8	Q Did he say why?
9	A Against some sort of S.E.C. ruling.
10	Q Anything else?
11	A What he thought of it as an investment.
12	Q And what did he say?
13	A He thought it was a good investment.
14	Q Now, when he said he thought it was a good
15	investment, was he referring to the six percent
16	promissory note?
17	A Not just the six percent promissory note.
18	Q Did he describe in what way it was a good
19	investment?
20	A That the potential was there, that it was
21	a somewhat speculative nature, that there was a chance
22	for gain, there was also a chance for loss.
23	Q Did he in any way indicate that you might
24	receive more than the six percent return that was
25	indicated on the promissory note?

	A 1670
	Excerpts from Deposition of Seymour P. Weinberg
1	A Yes.
2	Q And what did he say about that?
3	A That should the private placement and the
4	purpose of the investment were successful, that there
5	would be a gain.
6	Q Did he describe how you would share in that
7	gain other than receiving back your \$50,000 and six
8	percent?
9	A Oh, yes.
10	Q And what did he sa, about that?
11	A That was included in this matter in terms
12	of the \$45,000 being returned and units of shares in
13	D-Z being obtained.
14	Q All right. You are referring to the issue
15	of the units under "small issue registration," which
16	begins on the bottom of page seven and carries through
17	eight and the following page?
18	A Correct.
19	Q Did Mr. Zimmerman indicate to you that thos
20	units that are there described would be made available

A I was led to believe that I would be able to participate in the availability of those, yes.

to you with D-Z, if the D-Z venture was successful?

Q Did he indicate to you that that package, or those units, which are described there in the private

Excerpts from Deposition of Seymour P. Weinberg

1	placement memorandum, would replace the six percent
2	promissory note which you would be purchasing in the
3	first instance?
4	A Replacing no.
5	Q It would be over and above the six percent
6	promissory note?
7	A It would be a package, \$45,000 replacement,
8	plus the \$45,000 promissory note, or replacement in
9	cash if it were available at the time, plus the four
10	units.
11	Q My question is, would you, assuming that the
12	issue of units as described in the private placement
13	memorandum were to be made, would you then be required
14	in order to obtain one of those units to invest another
15	\$50,000 or would you just turn in your note which would
16	already be invested?

	Excerpts from Deposition of Seymour P. Weinber g
1	A I would not be required to invest an 25
2	additional \$50,000.
3	Q Anything else that you can recall at that
4	meeting with Mr. Zimmerman? If you want to, look
5	through the memorandum, I would like if there is any-
6	thing specifically that you can now recall that he
7	discussed with you, whether it is in the memorandum
8	or otherwise.
9	A I remember, he asked me a lot of personal
10	questions in terms, as they are in here, in terms of
11	net worth that are required, that I had to answer,
12	Exhibit 3.
13	Q You are referring to the certificate and
14	purchase order which is Exhibit 3?
15	A Correct.
16	Q To the private placement memorandum?
17	A We went over this.
18	Q You went over that?
19	A Yes.
20	Q You went over the matters in there which
21	you were required to represent, is that what you are
2 2	telling me?
23	A Correct.

Including your net worth?

Correct.

Q

25

	2015
. (Excerpts from Deposition of Seymour P. Weinberg
1	Q Did he ask you specifically what your net
2	worth was?
3	A No, he asked me if my net worth was in
4	excess of \$150,000 as stated here.
5	Q Did he ask you to provide him with a
6	financial statement:
7	A No.
8	Q Did he ask you any questions about what
9	constituted your net worth?
10	A No.
11	Q Did Mr. Zimmerman, at the meeting which
.12	you have described, leave with you a copy of the
13	private placement memorandum?
14	A Yes.
15	Q Is it that same copy which you have before
16	you now, which is Exhibit 25?
17	A Yes.
18	Q Have you ever received any other copies
19	of that memorandum?
20	A No.
21	Q Do you know of any amendments that have
22	ever been made to that memorandum?
23	A I really don't know what would be considered
24	a

Q

25

Okay.

1	Excerpts from Deposition of Seymour P. Weinberg
	A an amendment to this. 27
2	Q Any documents which were prepared, either
3	as a replacement for the memorandum, which is Exhibit -
4	A 25.
5	Q 25, or which were prepared to incorporate
6	changes in that memorandum. So, when I say amendments,
7	I mean physical documents prepared to incorporate
8	changes in the original terms as set forth in that
9	memorandum.
10	A May I ask a question?
11	Q Certainly, if you have any difficulty you
12	can ask me, you can ask your counsel.
13	A There is mentioned in here, I believe, of
14	something being mentioned about a 13D, I think that's
15	the number given, Schedule 13D, page 7.
16	Q Yes.
17	A Now, it was my is that considered an
18	amendment to this?
19	Q Well, you are referring to on page 7,
20	that is, there was a reference that a Schedule 13D,
21	it was anticipated, would be required with the Securities
22	and Exchange Commission. No, my question does not
23	incorporate that as an amendment. In other words

that is not within my definition of an amendment,

within the question I asked you.

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	A 1010
	Excerpts from Deposition of Seymour P. Weinberg
1	A Then, so far as I can recall, I received 28
2	no notification of any amendment.
3	Q Did you receive any notification of any
4	changes, whether or not they were reduced to writing,
5	and again, I am excluding 13D.
6	A We are talking about
7	Q Any changes in the terms, any notification
8	to you?
9	A Up to what point?
10	Q Up to today.
11	A Yes.
12	Q And what notification have you received?
13	A I was told thename of an REIT.
14	Q And when were you told that?
15	A Two days before I issued my check, May the
16	6th.
17	Q Is there any connection with your not
18	making the investment until May 8th with your obtaining
19	that information?
20	A There were two significant reasons.
21	Q Would you
22	A Would you like to know them?
23	Q Yes, I would like to know them, please.
24	A One is, I was interested, if possible,

in learning the name of the REIT that was involved.

1 2

3

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Two, I had anticipated certain funds coming into my possession, and I was uncertain as to whether I wanted to proceed with additional investment until I had those funds in hand.

Excerpts from Deposition of Seymour P. Weinberg

. 1	1
1	Q Did you tell Mr. Zimmerman at the meeting 30
2	that you have already described that you did not want
3	to make an investment or commit yourself to make an
4	investment until you knew the identity of the REIT that
5	was involved?
6	A No.
7	Q Did you ever tell him that?
8	A No.
9	Q Now, other than being notified of the
10	identity of the REIT, were there any other changes that
11	you know of in the terms of the private placement
12	memorandum?
13	A None that I'm aware of.
14	(Thereupon, an off the record
15	discussion was had.)
16	Q '(By Mr. McKenna) At that meeting with Mr.
17	Zimmerman that you have already testified about
18	A The first meeting?
19	Q The first meeting. Did he have any other
20	documents with him?
21	A None that he showed to me.
22	Q Did he make any notes at the meeting?
23	A I don't recall him making any notes.
24	Q Do you recall whether he did any calculations
25	on paper for you to see?

	Excerpts from Deposition of Seymour P. Weinberg
1	A I don't recall any. 31
2	Q Such as showing you book values of various
3	REIT's, unidentified as to name, perhaps, but calculation
4	of that sort as opposed to their stock, the selling
5	price of their stock on the market?
6	A I don't know that he made any calculations.
7	We did discuss book value versus market value of their
8	stock.
9	Q You don't recall him showing you any document
10	in which he had this set forth?
11	A No, I do not.
12	Q Going back to the subpoena, when you received
13	the subpoens, did you review the various items of
14	documents which are specified on pages two and three of
15	the notice attached to the subpoena?
16	A I looked at it and looked at what they
17	wanted, what they were requesting that I was required
18	to produce.
19	Q And did you at some time before you came
20	here today attempt to pull together all the documents
21	that you understood were called for by those items?
22	A Yes, I did.
23	Q Do you have those documents with you?
24	A Yes, I do.

Would you produce to me all those documents

Q

which you have not alre	eady	produced?
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A A check.

Q The witness is handing me a check of Seymour P. Weinberg, drawn upon the First National Bank of Atlanta, Georgia, in the amount of \$50,000 payable to the order of D-Z Investment Company. As it says on the face, it is a "processed" check, and I would like to mark that.

MR. MARSHALL: What did it say on the front?

MR. McKENNA: It says "processed."

The "D" seems to be missing, but other than that, it appears to be the word "processed."

MR. GIBERT: That's the word all right.

	" Degroup 1. Wethberg
1	MR. McKENNA: May I have this
2	marked as Exhibit 27 for identification?
3	Well, ca. we have this check deemed
4	marked, and I would request, Mr. Gibert,
5	if you could have a copy made.
6	MR. GIBERT: Would you need both
7	sides?
8	MR. McKENNA: Yes, both sides.
9	MR. McKENNA: If that is agreeable
10	to everybody.
11	MR. MARSHALL: Yes, it is agreeable
,12	and that will be marked 27 I believe.
13	MR. McKENNA: 27. What is the date
14	of the check?
15	MR. MARSHALL: May 8, 1974.
16	Q (By Mr. McKenna) Any other documents?
17	A One other document. Oh, no, I am sorry.
18	Q Let the record note that the witness is
19	handing to me a letter dated July 12th, 1974,
20	addressed to himself, Dr. Seymour Weinberg, and sign
21	"Sincerely, D-Z Investment Company" and the handwrit

22

23

24

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nd signed signature of Jerome Zimmerman, apparently put on by a secretary with the initials of CST, which relates to the report meeting of July 22nd and request that be marked as Exhibit 28 for identification.

Excerpts from Deposition of Seymour P. Weinberg

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(The document was marked for identification as Exhibit 28.)

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I hand you the contents, MR. GIBERT: or rather I hand you a covering letter to the contents of a certified mail packet that came from your firm --

THE WITNESS: Yesterday it arrived.

MR. GIBERT: It arrived yesterday. according to the witness, that is the cover letter and I will hand you the rest of the documents, if you want, but surely you are not going to Xerox and put in the record all of those.

MR. McKENNA: No, I would just like to note that the witness has produced a letter of July 19, 1974 on the letterhead of Wachtell, Lipton, Rosen & Katz, addressed to himself and signed by James Steinberg, which letter purports to forward a copy of an order to show cause why a preliminary injunction shouldn't be entered during the pendency of this action; and, also, handed to me with the letter is a copy of an order to show cause, issued from the United States District Court,

Southern District of New York, on July

19th, 1974 at 3:21 p.m., signed Kevin J.

Duffey, U. S. District Judge, with annexed

papers; also, a copy of an order dated -
issued from the United States District

Court for the Southern District of New

York, dated July 18th, 1974, signed Kevin

T. Duffey, I believe it is, U. S. District

Judge, the signature in both instances being

conformed, and the second order relating to

the matter of continuation of depositions

and attendant document production. Having

noted that for the record, I return those

documents to Mr. Gibert.

Q (By Mr. McKenna) Mr. Witness, is there anything else?

- A No other papers that I have.
- Q All right. I am returning herewith your subpoens then.

(Discussion was had off the record.)

	(The	reupo	on,	an	off	the	record
discus	sion	was	hac	d.)			

MR. GIBERT: Mr. McKenna, yesterday

Mr. Levow was asked to send various documents,

and he has sert to me a memo from the desk of

Harold Levow, dated 7-22-74, hand written.

"Dear Hugh: Enclosed please find the two documents you wanted. I looked on my calendar and could find no notation of a meeting with Jerome Zimmerman.

"Thank you. Harold."

And then he attached copies of the documents.

You will recall that I asked him to produce the documents and send me a copy of the calendar notation, if it was.

Otherwise, send me a statement that there was no such notation:

MR. McKENNA: He started to fill this out.

MR. MARSHALL: Is that the only notation that appears on it?

MR. McKENNA: That's the only -MR. MARSHALL: Off the record a
moment.

record that the representation --

MR. McKENNA: As Exhibit 21A on the deposition of Mr. Levow, a memo from the desk of Harold Levow, dated 7-22-74, addressed to "Dear Hugh," Mr. Gibert.

MR. GIBERT: I merely wanted in the

That's 21A.

21B would be a letter of July 12,
1974, addressed to Mr. Harold Levow, from
D-Z Investment Company, signed Jerome
Zimmerman, apparently by the secretary,
relating to the report meeting of Monday,
July 22nd.

21C would be a letter of June 11,
1974, on the letterhead of D-Z Investment
Company, addressed to Mr. Harold Levow and
signed by Bruce R. Davis and Jerome Zimmerman
both, and referring to an enclosed questionnaire relating to a proposed proxy solicitation which is attached or stapled to the
letter, and which questionnaire is entitled,
"NJB Prime Investors Questionnaire" as of
May 31, 1974, in connection with proposed
proxy solicitation which we will mark as
21C-1.

A I recall this, yes.

Q You received such a questionnaire?

Q Dr. Weinberg, other than the documents which you have produced here, did you receive any other documents from or pertaining to D-Z, which you have not retained?

A I cannot answer that precisely. I have a vague recollection of some questionnaire that I may have signed. I am not sure about that, and this is vague.

- Q Anything else other than that?
- A None that I can recall.
- Q Okay. I show you --
- A None that I could find.

Q I show you a copy of a letter of June

11th, 1974, on the letterhead of D-Z Investment

Company, which was addressed to Mr. Bernard Kroll,

and marked Exhibit 9 on his deposition, and the

questionnaire, which was marked Exhibit 9A on Mr.

Kroll's deposition, being entitled NJB Prime Investors

questionnaire as of May 31, 1974 in connection with

proposed proxy solicitation, and I ask you if that is

what you were referring to when you said you had

thought perhaps you had received a copy of a

questionnaire?

1	A Yes.
2	O What did you do wish too but
3	Q What did you do with it? Did you fill
4	it out and return it?
	A To be honest with you, I really don't know.
5	I think I did but I really don't know.
6	Q Is it your best recollection that you
7	returned it, filled out and returned it?
8	
9	A If I received it, and I seem to think that
	I did, then that is what I did with it, either filled
10	it out and returned it or gave it to if it was give
11	to me by Mr. Zimmerman, then I gave it to him.

	begins in the second of the se
1	Q Do you recall receiving a copy of the
2	letter of June 11, which is with the questionnaire?
3	A I do not recall exactly. No, I do not.
4	Q Do you recall discussing such a questionnaire
5	with Mr. Zimmerman?
6	A I remember some of those questions and how
7	or when or why I remember them, I cannot really give
8	you an honest answer.
9	Q Do you recall having discussed some parti-
10	cular questions with Mr. Zimmerman?
11	A I hate to be very vague about this, but I
1,2	recall it, I think. I'm pretty sure I have seen this
13	before, and can glance down here. The answers were
14	no in all pretty much negative.
15	Q To the questions in the questionnaire?
16	A Yes.
17	Q Well, getting back to my prior question, do
18	you recall discussing it with Mr. Zimmerman?
19	A As a matter of direct discussion with him
20	about it, no.
21	Q As a matter of any other type of discussion?
22	A No. I mean, the point is, if I got it, I
23	filled it out and sent it back. I really do not if
24	I did, it should be on their file. I don't have it in
25	my files.

	Excerpts from Deposition of Seymour P. Weinberg
1	Q After the meeting with Mr. Zimmerman which
2	you have already testified about, the first meeting, as
3	you call it, did you have any subsequent discussions or
4	meetings with Mr. Zimmerman about the investment in D-Z?
5	A Yes.
6	Q And when was the next such discussion or
7	meeting?
8	A Two days prior, May the 8th May the 6th.
9	Q What type of discussion was that, an oral
10	discussion, or meeting with you?
11	A Oral.
12	Q Did you meet with him?
13	A No.
14	Q How did the discussion come about?
15	A I can't tell you if I originated the telephone
16	call or if he called me. I was still interested in the
17	investment, and I was had made arrangements that if
18	I were to go into the investment, I would have the funds
19	available to me. And I called him for further discussion
20	about it.
21	Q And
22	A I mean, I spoke to him. Now, whether he
23	called me and asked me if I was ready to, or I called
24	him and told him I was ready to.
25	Q You do recall it was a telephone conversation

1	A Yes. 42
2	Q And it was on May 6th?
3	A Yes.
4	Q What did he say to you and what did you
5	say to him in that telephone conversation?
6	A He said he could then tell me the name of
7	the REIT that was involved.
8	Q And you previously testified about that?
9	A I believe so.
10	Q It is the same conversation you previously
11	testified about? Anything further in that conversation?
12	A That I had been able to get funds available
13	to me.
14	Q You told him that?
15	A Yes.
16	Q Had you had any prior discussion with Mr.
17	Zimmerman about your having to get funds available?
18	A Yes.
19	MR. GIBERT: He has already testified
20	to anticipating the receipt of some funds.
21	THE WITNESS: I was just going to say,
22	yes, because

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Q I believe I understood he was testifying that this was something he, himself, had in his own mind. I did not understand him to have testified that he told this to Mr. Zimmerman. I just want to be sure.

A Now, let me answer the question as you have just put it. Mr. Zimmerman and I are involved in another transaction.

Q Fourteenth Street?

A Fourteenth Street. Those funds were supposed to be come available as of a date. We subsequently found out that those funds would not be, so we had conversation about funds becoming available.

Q Now, when was this conversation, in your first meeting with him?

A No, after the first meeting.

Q But before the May 6 telephone conversation?

A Yes.

Q So you had another discussion between those two?

A Right.

Q And where was that discussion?

A Telephone.

Q And what was the discussion?

A . That apparently the closing of the Fourteenth Street was going to be delayed, and as a result

	Excerpts from Deposition of Seymour P. Weinberg
1	those funds would not be available.
2	Q What was the closing of the Fourteenth
3	Street, was it a sale of Fourteenth Street?
4	A Sale of Fourteenth Street.
5	
6	Q Sale of your interest?
7	A Sale of real estate, limited partnership
8	interest, the total, I mean not just my interest.
	Q The total partnership, the partnership's
9	interest was being sold?
10	A The total investment was being sold.
11	Q And what did you say to Mr. Zimmerman in
,12	that conversation?
13	A Since I was still interested in D-Z
14	Investment, I would have to look and see if I could
15	raise funds from another source.
16	Q Anything else in that conversation?
17	A Nothing that I think is pertinent to this
18	I mean what we are
19	Q No, I'm talking about what we are dis-
20	cussing, this subject matter. Now, getting back to
21	the May 6 conversation, you recall anything else you
22	haven't testified about yet?
23	A I testified that I learned the name of the
24	REIT, that I had gotten available funds.
	and the golden available funds.

You told Mr. Zimmerman this?

,	Excerpts	from Deposition of Seymour P. Weinberg
1	A	Yes. 45
2	Q	That you had gotten available funds?
3	A	Yes.
4	Q	And that you wanted to make the investment?
5	· A	No, I did not, still not.
6	Q	And what else, anything else?
7	A	That was basically it, as I recall.
8	Q	You told him you had available funds, but
9	you hadn't	made up your mind or not yet as to whether
10	ll .	to commit yourself to make the investment?
11	A	Correct.
12	Q	When was your next discussion with Mr.
13	Zimmerman?	
14	A	May the 8th.
15	Q	And by what means was that, telephone?
16	A	Telephone, and that is when he came to my
17	house and	we set up the lending of the money.
18	Q	Did you phone him first?
9	A	Probably.
20	ઉ	And what did you tell him in that telephone
1	conversatio	n?
2	A	That I had decided to go ahead with the
3	investment	•
4	Q	And what did he say?
_	A	Pine Tarill

1	Q And did he come over?
2	A Yes, he did.
3	Q And he brought the note with him?
4	A Correct.
5	Q Dr. Weinberg, I show you a copy of the
6	note which was marked Exhibit 26 on your deposition
7	today, and ask you is that the note that you received
8	from Mr. Zimmerman on May 8th?
9	A Yes.
10	Q And did you on that date give him your
11	check?
12	A Yes.
13	Q For \$50,000?
14	A Yes.
15	Q And is Exhibit 27 a true copy of that
16	check?
17	A Yes.
18	Q Now, what, if any, discussion did you have
19	with Mr. Zimmerman on the occasion when he brought
20	you the note?

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. 1	Excerpts from Deposition of Seymour P. Weinberg
1	A We again reviewed what sort of investment
2	in terms of the units. I told him that I had consulted
3	with my accountant the day before for personal reasons,
4	that it had the potential of being a successful invest-
5	ment and that I hope it turned out to be so.
6	Q You told Mr. Zimmerman it had the potential
7	of being a successful investment?
8	A That it seemed to have the potential.
9	Q Anything else? Did he give you any further
10	information about what was going on with respect to
11	D-Z?
.12	A That they were attempting to secure a list
13	of the stockholders.
14	Q Anything else?
15	A That they had purchased a certain amount
16	of stock.
17	Q Do you recall the amount?
18	A I recall that I know it had to be over
19	five percent because otherwise they could not have
20	attempted to this was explained to me, that it had
21	to be over five percent of the outstanding stock, or
22	else they could not have tried to have gotten the list
23	of stockholders.
24	Q Did they tell you what they were going to

do with the list of stockholders?

	excerpts from Deposition of Seymour P. Weinberg
1	A Told me that they were going to try to 48
2	obtain enough stock as presented in the original thing
3	to try to get control of management.
4	Q Did he say how much stock they intended to
5	get either in amount or percentage in order to get
6	control?
7	A Well, they more or less had worked this
8	out, and he said over about 20 over 20 percent,
9	anyway.
10	Q And what specifically was the purpose of
11	getting the stockholders list, did he tell you that?
12	A Should the occasion arise and there might
13	be the need for a proxy fight, that they would want to
14	know who the stockholders were.
15	Q Now, you said you reviewed with him what
16	sort of investment it was in terms of the units. What
17	was stated about that more specifically?
18	MR. MARSHALL: I'm sorry, would you
19	repeat that question, please, or the
20	reporter please repeat it?
21	(Thereupon, the court reporter read
22	the referred to question.)
23	THE WITNESS: Nothing more specific
24	than is stated for

Excuse me. I was going

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Q (By Mr. McKenna) Dr. Weinberg, you testified that in the discussion at your house, when Mr. Zimmerman brought you the note, among other things, you reviewed what sort of investment it was in terms of the units, and that was my question I believe you started to answer, I am not sure, but would you answer the question.

A He explained to me, again, that units would be as presented in terms of page 8, of this private placement memoranda.

Q Which is Exhibit 25.

MR. MARSHALL: Excuse me, Mr. McKenna.

Maybe I am wrong, I thought your question

related to the notes, when you said unit,

are you referring to the --

MR. McKENNA: No, I am referring to whatever the witness -- the witness

Excerpts from Deposition of Seymour P. Weinberg

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used the word "units," and I am referring to whatever is in the private placement memorandum, and I want him to be specific. 56

MR. MARSHALL: Well, there are two things in the private placement memorandum, is that what he is discussing?

	Excerpts from Deposition of Seymour P. Weinberg
	Q He was referring to page eight, which is a
2	follow up of page seven, a follow up, is that correct?
3	You are referring to the units?
4	A Your previous question related to why I
5	thought it was, or why we discussed it. It was a good
6	investment

Q No, my question just related to what you had discussed and you said you reviewed what sort of investment it was in terms of the units.

A In terms of being a good investment and, therefore, in terms of the units.

Q And what was said in that respect?

A That should the investment proceed along the lines that it was hoped, that it would -- that actually -- actually, after a relatively short period of time, I would again get \$45,000 back in a promissory note and that I would be also issued at that time four units made up of stock of D-Z Investment Company.

- Q For which you would pay how much?
- A Nothing.

- Q Well, you mean --
- A In exchange for my \$50,000 original promissory note.
- Q Now, you testified that you told Mr. Zimmerman in this conversation that you consulted with your

	Excerpts from Deposition of Seymour P. Weinberg
1	accountant the day before for personal reasons. What
2	was the personal reason you consulted your accountant?
3	A What effect this might have on my total
4	tax picture.
5	Q Solely for tax purposes, not for inmestment
6	advice?
7	A Investment advice to a degree. I think the
8	two relate to each other.
9	Q Investment advice as related to tax
10	consequences?
11	A Correct.
12	Q Now, have you related everything you discussed
13	with Mr. Zimmerman at that time when he brought you the
14	note, again, relating to the investment?
15	A I believe so.
16	Q Do you recall any other discussions you
17	have had with Mr. Zimmerman up to and including the
18	time that you acquired the note on May 8 with respect
19	to D-Z that you haven't testified about?
20	A I cannot recall at this point.
21	Q You testified about a first meeting, a
22	telephone conversation in which you indicated to him
23	that you in which was discussed the fact that the
24	14th Street investment was not maturing, so to speak,
25	and subsequent relephone conversation which you

ind	icate	ed the	at yo	ou had	arı	ranged	to	have	fun	ds a	availa	ble
but	you	were	not	ready	to	commit	y	oursel	lf,	and	final	1у,
the	meet	ting.		٠								

A That I was ready.

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- Q Held at your house pursuant to a telephone conversation the same day?
- A All meetings or conversations were at my house.
- Q You recall any other discussions or conversations with Mr. Zimmerman? Again, this is up to May 8, including May 8.
- A I can't give you precise times. I know there have been other discussions, but I can't tell you if it was before May 8 or after May 8 in terms of this matter.
 - Q Do you recall anything that was discussed?
- A Prior to May 8, now? You are trying to be specific?
- Q Well, no, that was -- that you can now recall was discussed prior to May 8 or that you can recall was discussed and may have been discussed prior to May 8.
- A There was mention made of a brokerage firm, and I don't know, can't recall the exact name of it, that thought that there was a real possibility that the

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Q (By Mr. McKenna) Do you recall with any greater specificity that discussion?

A That they were specialists in the field of -- that related to proxy considerations, that they were a well known brokerage firm, and at that point in time, it seemed like a reasonable idea that it would go ahead as hoped for.

Q Have you ever heard anything further about this brokerage firm and their role in the investment?

A Very limitedly by scanning the papers I received from your law firm last night, and I only scanned them very briefly because there was quite a lot to them. And I saw the name in there, too.

Q Other than that, prior to that?

A No.

MR. MARSHALL: I assure you, Doctor, that they present a one-sided view, that

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My father-in-law, in my opinion, and I don't want to bring in any outsiders, is an intelligent,

as bad as was reflected by their stock market price.

1	successful businessman.
2	Q What is the nature of his business?
3	A Well, at this point he is essentially
4	retired.
5	Q Did your father-in-law express any interest
6	in investing in D-Z?
7	A No.
8	Q Was there any discussion about him possibly
9	investing?
10	A No, I did not discuss D-Z per se.
11	Q I don't mean either D-Z or the investment
12	that you were talking about.
13	A I discussed only investments in REIT's.
14	Q Did you ever have any discussion with your
15	father-in-law about him possibly participating in this
16	investment opportunity?
17	A Ño.
18	Q Did you ever have any discussion with anybod
19	else about their possibly participating in the D-Z
20	investment?
21	A Only after I found out who had already
22	invested.
23	Q And are you telling me that your discussion
24	was with those who had already invested?
	A Yes.

1 1	1		1
,	Q	And only those people?	63
2	A	Yes.	
3	Q	Can you tell me who they were?	
4	A	Dr. Levin, Mr. Jacobson. I had never know	n
5	Mr. Kroll be	efore the other just saw his name on the	
6	list. I had	i never met him before.	
7	Q	You never met him before the meeting in	
8	this office	last week?	
9	A	That's correct: I had not discussed it	
10	with Mr. So	phier before.	
11	Q	Did you know him?	
12	, 🛦	I know him socially, and he was involved	
13	in the 14th	Street deal, but I know him socially.	
14	. Q	Are you a member of the Standard Club of	
15	Atlanta?		
16		Yes.	
17	Q	Okay.	
18	. A	Unfortunately.	

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Q Did you ever discuss with anybody about them possibly participating in your investment, that is, sharing it with you?

A No, this was purely my investment.

Q Did you ever suggest to Mr. Zimmerman or anybody else connected with D-Z, whom you knew to be connected with D-Z, any other persons who they might approach or who might be interested in making an investment in D-Z or the opportunity which D-Z presented?

A Did I discuss them investing?

Q Yes, did you ever suggest anybody to Mr. Zimmerman or did anybody else connected with D-Z?

A I don't believe I ever did, no.

Q Have you ever been advised who D-Z -- who is intended -- withdraw the question.

Have you ever been advised who D-Z intends to appoint as trustees of the REIT if D-Z does obtain control?

MR. MARSHALL: I object to the form of the question in that it is misleading by the use of the term "appoint."

MR. McKENNA: Nominate.

MR. MARSHALL: It is my understanding trustees are elected to office by the

-- likely to be the one to be nominated.

Any basis for that belief?

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Security --

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A Yes.

Q Do you know what Mr. Ralph Becker's

A I think he has had -- no, no basis except that he is involved with Security -- is it Investment?

MR. GIBERT: Security Management Company
I believe.

THE WITNESS: Security Management Company, and therefore I thought beings he was associated with Security Management and Bruce Davis, and that Bruce Davis and D-Z -- I presumed that they would be involved as trustees.

Q (By Mr. McKenna) Are you saying this of Mr. Saul Becker as opposed to Ralph Becker?

A Yes, I thought, in my mind --

Q Is it your understanding it was Mr. Saul Becker who was more closely affiliated with Security than Mr. Ralph Becker?

A I don't know "more closely", it is just my personal opinion that he is more knowledgeable.

Q Well, is it your understanding that both Mr. Saul Becker and Mr. Ralph Becker are affiliated in some capacity with Security Management?

Excerpts from Deposition of Seymour P. Weinberg 67 1 affiliation is with Security Management? I am sorry. 2 Mr. Saul Becker's affiliation is with Security Manage-3 ment? 4 I saw what his -- did I know prior? 5 Yeah. 6 I think he is a participating owner of 7 Security Management, a partner. 8 Well, what is your basis for that? 9 Personal communication with Mr. Saul 10 Becker, personal knowledge. 11 I refer you to the second page of the 12 private placement memorandum, which identifies certain 13 officers. Well, the officers of Security Management 14 Company as being Bruce R. Davis, president, Jerome 15 Zimmerman, vice president and assistant secretary, 16 and Saul Becker as vice president and assistant 17 secretary. Is that the basis of your knowledge of 18 Mr. Becker's affiliation? 19 It goes beyond that. 20 Q Okay. 21 MR. MARSHALL: Mr. McKenna, I thought 22 your question was directed to Security 23 Management Company, I think the list you

read to the witness relates to D-Z.

MR. McKENNA: I was confused, you

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Excerpts from Deposition of Seymour P. Weinberg

1	are correct, Mr. Marshall. I misread the 68
2	entry, since it says one of the officers
3	of the company.
4	
5	MR. MARSHALL: I think right above
6	it it dons indicate, however
7	MR. McKENNA: You are correct.
	MR. MARSHALL: that Davis and
8	Ralph Becker, along with Saul Becker,
9	are directors of Security. Maybe that
10	is what you had in mind.
11	MR. McKENNA: That is what I had in
12	mind.
13	Q (By Mr. McKenna) Do you have any other
14	information as to who D-Z has in mind as possible
15	trustees of the REIT?
16	A No, I do not.
17	Q You have indicated that you were advised
18	who the REIT is. What REIT is it?
19	A NJ Prime, NJ.
20	Q NJB Prime Investor?
21	A Correct.
22	Q Had you heard of NJB Prime before Mr.
23	Zimmerman told you that was the name of the REIT they
24	were interested in?
25	A Only from personal looking at the

Excerpts from Deposition of Seymour P. Weinberg 1 69 American Stock Exchange, New York Stock Exchange 2 listings of REIT's. 3 Did you have any knowledge about NJB Prime other than the listings? You talking about the price 5 quotations? 6 Yes. 7 Do you have any knowledge about NJB Prime Q 8 other than its price quotations in the newspapers? 9 No. 10 MR. MARSHALL: As of what point of 11 time is your question? 12 MR. McKENNA: Up to the time Mr. 13 Zimmerman identified NJB Prime as the 14 REIT that they -- that D-Z was interested 15 in. 16 THE WITNESS: Prior to my conversation 17 as of May the 6th, then, we are talking 18 about? 19 Q (By Mr. McKenna) Yes. 20 No, I did not. 21 Q You mentioned earlier that you had some 22 discussion with Dr. Levin about possibly selling his 23 note at a discount. Did you ever consider selling

A No.

your note at a discount?

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	Excerpts from Deposition of Seymour P. Weinberg
1	Q Have you ever had any discussions with
2	anybody else about selling D-Z notes at a discount?
3	A No. May I put into the record that this
4	was more or less of a facetious type of offer, with no
5	intent to actually do so.
6	Q Have you ever been informed, either orally
7	or by documents, as to the capitalization of D-Z

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The private placement indicates, as I interpret it, that there was a hundred dollars capital-It is in here.

Investment Company with respect to its common stock,

that is, what was paid for its common stock?

MR. GIBERT: Are you referring to page 8, where it refers to the unit, is that what you are referring to?

THE WITNESS:

MR. GIBERT: No?

THE WITNESS: No.

(By Mr. McKenna) I would like to be more Q Mr. Gibert was pointing the witness to page 8 of the private placement memorandum, which I think indicates the stock to be -- that it was anticipated would be offered in the -- the units would have a \$100 par value, is that correct?

MR. GIBERT: I was asking him whether

Excerpts from Deposition of Seymour P. Weinberg

he had said that there was something in the private placement memorandum that would help him answer your question, so I pointed to page 8 and asked him if he was referring to the discussion of the units.

	Excerpts from Deposition of Seymour P. Weinber $argamma$
1	MR. McKENNA: And the \$100 par value 72
2	which you suggested
3	MR. GIBERT: With reference to the
4	\$100 par value, he had something about
5	\$100, and I asked him
6	MR. McKENNA: I realize. I want to
7	get on the record that is what he was saying,
8	that no
9	THE WITNESS: You asked me about
10	MR. McKENNA: When he said "no,"
11	that what he meant, did not refer
12	THE WITNESS: Refer to the units.
13	MR. McKENNA: That's right.
14	THE WITNESS: You asked me a
15	question concerning the capitalization.
16	MR. McKENNA: Yes.
17	THE WITNESS: It states I interpret
18	it as the authorized capital stock, 10,000
19	shares of \$100 par value. That's what I
	interpreted it as meaning.
20	Q (By Mr. McKenna) Were you informed as to
21	how many shares had actually been issued, and what had
22	been paid for them?
23	A I also recall that they I think I recall
24	

that there were two shares issued, one each to Bruce

	Excerpts from Deposition of Seymour P. Weinberg
1	Davis and one each to Jerome Zimmerman. 73
2	Q I refer you to page
3	A Fifty shares, there it is.
4	Q Fifty shares each to Mr. Zimmerman and Mr.
5	Davis?
6	MR. MARSHALL: Well, to Security
7	Management.
8	MR. McKENNA: I'm sorry, to Security
9	Management and Mr. Zimmerman and Davis.
10	THE WITNESS: There it is.
11	Q (By Mr. McKenna) Have you ever been shown
12	any documents, reports, financial statements of any
13	nature reflecting the financial condition of D-Z Invest-
14	ment Company?
15	A No.
16	Q Have you ever been shown any financial
17	reports, financial statements or other documents
1.8	reflecting the financial condition of NJB Prime Investors?
19	A Have I been shown?
20	Q Yes.
21	A No.
22	Q Have you ever seen any?
23	A I looked up
24	Q You looked it up yourself?
25	A Yes.

Excerpts from Deposition of Seymour P. Weinberg

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When did you do that? Q

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he finished. You see, he said, "I looked up," and you interrupted him. MR. McKENNA: I'm sorry.

MR. GIBERT: Well, I don't know that

THE WITNESS: I looked it up on May the 7th in Standard and Poor's listing of American Stock Exchange, listings of stock on the American Stock Exchange.

(By Mr. McKenna) And other than Standard Q and Poor's, did you do any other -- did you look it up any other place?

I cannot give you a point in time, but I think it was subsequent to -- about a Kazubba type of involvement with NJB Prime.

- Something you read about in the newspapers? Q
- Wall Street Journal.
- Have you ever been -- up until the time Q you purchased your note on May 8th, were you given any documents reflecting or setting forth the financial condition or status of Security Management Company, Inc.?
- Where did you obtain the funds which you Q used to purchase the note of D-Z Investment Company?

Excerpts from Deposition of Seymour P. Weinberg 1 Borrowed them from the First National Bank. What interest rate did you pay? Q 3 Eight percent. Did you give them any collateral? Q 5 Yes. 6 What was the collateral? Q 7 Stock. 8 What stock? Q 9 Personal common stock. 10 Q Of what? Various stock, common stock, such as Xerox, 11 A Shearing Plow, a significant amount of common stock. 12 Did you sign a note to the bank? Q 13 A Yes. 14 Do you have a copy of the note? 15 Q No. 16 Did you sign a pledge agreement? Q 17 What is that? I'm sorry. A 18 Q An agreement with respect to the bank 19 holding the stock as collateral for the loan? 20 A Yes. 21 Q Do you have a copy of that? 22 No. 23

Did you sign any applications for the loan to the bank?

Q

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Did you sign any financial -- I'm sorry.

1	A I presented them with a financial statement.
2	Q Do you have a copy of the financial state-
3	ment?
4	A No, not with me.
5	Q Well, did you retain a copy, is what I
6	mean, in each of these instances?
7	A Yes, I have a copy of it at home.
8	Q Of the financial statement?
9	A My personal financial statement.
10	Q The one you gave the bank?
11	A Yes.
12	Q Did you understand that's what I meant with
13	respect to the other documents also?
14	A Yes.
15	Q I would call again for the copy of that
16	financial statement, Mr. Gibert, if you can get a copy.

Excerpts from Deposition of Seymour P. Weinberg

3	THE WITNESS: I have no objection.
4	MR. GIBERT: The witness will make it
5	available and then I will make it available
6	to you.
7	Q (By Mr. McKenna) Thank you very much. Did
8	you advise Mr. Zimmerman that you had borrowed the mone
9	to purchase the note?
10	A Yes.
11	Q Did you advise Mr. Zimmerman that you had
12	pledged stock as collateral for that loan?
13	A No.
14	Q Other than your purchase of the note from
15	D-Z and consequent loan of money to D-Z, have you ever
16	loaned money for the purpose of purchasing stock, that
17	is, loaned money to somebody who was going to use the
18	proceeds for the purpose of purchasing stock?
19	A No.
20	Q At the time that you received the note from
21	Mr. Zimmerman, did you sign any documents in connection
22	with your receipt of that note? Did you sign any
23	receipts? Did you sign any other documents, in your
24	representations, letters?

As I indicated before, there war a question

- of whether my net worth was over \$150,000, if that's a question --
 - Q No, I -- I'm sorry, I didn't mean to interrupt. Go ahead.
 - A I believe I signed something of that nature that I was --
 - placement memorandum, and to Exhibit 3 thereto, which is entitled "Certificate and Purchase Order," which is a document we have previously referred to in your testimony, and I will ask you if you recall having signed such a letter and purchase order, and having delivered it to Mr. Zimmerman or anybody else connected with D-Z at or before the time you acquired your note.
 - A Prior?

- Q I said at or before.
- A I believe I did.
- Q Is it your best recollection that you did sign such a certificate and purchase order?
 - A My best recollection is I did.
- Q I believe you testified you went over it with Mr. Zimmerman first?
 - A Yes.
- Q On the back of this Exhibit 25, private placement memorandum, there is some handwriting on the

	Excerpts from Deposition of Seymour P. Weinberg
1	back of the last page. Is that your handwriting?
2	A Yes.
3	Q When did you put that there?
4	A I put that there at on May the 8th.
5	Q And would you describe to me well, would
6	you first read what it says?
7	A It says, "Crawle," spelled C-r-a-w-l-e,
8	"Z, 1, D, 1, Jacob, Sophier, Levow, Levin, Weinberg."
9	Q And what did you intend to signify by
10	those notations?
11	A At that point, it was who had purchased or
12	who had lent money to D-Z at that point in time.
13	Q This is as of May 8th?
14	A As of May 8th.
15	Q Mr. Zimmerman informed you at that time?
16	A I asked him who else was lending money
17	under the circumstances, and these are the this
18	is a listing of the people.
19	Q Now, the first name is
20	A Kroll.
21	Q Is that the person you now understand to
22	be Bernard Kroll, K-r-o-1-1?
23	A Yes.
24	Q I notice his name is crossed out with a
25	brown pencil. Did you do that?

Excerpts from Deposition of Seymour P. Weinberg

1	A Yes 82
2	Q For what reason?
3	A I don't know why I did that.
4	Q After Mr. Kroll's name there appears a
5	figure.
6	A "2."
7	Q What is the significance of that?
8	A The significance to me was \$100,000 as
9	opposed to \$50,000.
10	Q That he was purchasing two notes as opposed
11	to one?
12,	A Correct.
13	Q Were you told that he had actually purchased
14	two notes by that time, or he committed himself to
15	purchase two notes, or what?
16	A It was my impression that he was either
17	purchasing he had committed or had already.
18	Q And next to the Z is a 1 and next to the
19	D is a 1. Would you tell me what that is?
20	A Zimmerman and Davis.
21	Q What did the "1" signify?
22	A That they were also committed to, or had
23	already purchased \$50,000, or invested \$50,000.

Excerpts from Deposition of Seymour P. Weinberg

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Q I have just a few more questions, gentlemen, I just want to check out a few things first.

Do you have a firm recollection now that the notes which are on the back of Exhibit 25, on the back of the last page, were placed by you on May 8th, the date that Mr. Zimmerman brought you the note of D-Z Investment Company?

A To the best of my knowledge, that is so.

MR. McKENNA: I have no further

questions.

MR. MARSHALL: I would suggest at this point that we take a brief recess, at which point I will review my notes and determine what, if any, questions I would like to propound to the witness on cross.

MR. McKENNA: You are requesting a recess? I agree.

MR. MARSHALL: That is what I asked for.

(Thereupon, a recess was had.)

CROSS-EXAMINATION

BY MR. MARSHALL:

Q Dr. Weinberg, I believe you have testified that you were not shown financial records concerning

Excerpts from Deposition of Seymour P. Weinberg 1 D-Z Investment Company at or before you purchased the 2 promissory note from D-Z Investment Company, is that 3 correct? 4 To the best of my recollection, that is 5 correct. 6 Subsequent to your acquisition of the 0 7 promissory note, were you ever shown financial 8 records of D-Z Investment Company? 9 Not that I recall. 10 Did you ever make a request that Mr. 11 Zimmerman or anyone else affiliated or associated with 12 D-Z to see D-Z's financial records? 13 No. 14 Did you ever have any discussion with Q Mr. Zimmerman concerning access by you to D-Z's books 15 and records, should you desire to see them? 16 17 No. When you purchased a note from D-Z, did 18 you, yourself, have any understanding regarding 19 access to D-Z's books and records, if you should 20 desire to see them? 21 22 No. I believe you have testified that you were 23 advised of the name of the REIT in question on May 6. 24

1974, at the time Mr. Zimmerman advised you that REIT

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Excerpts from Deposition of Seymour P. Weinberg 85
was NJB, were you aware of the fact that NJB was listed
on the American Stock Exchange?
A Yes.
Q You have testified that on May 7, you
reviewed certain financial data concerning NJB and
Standard and Poor's, is that correct?
A I believe it is Standard and Poor's, a
little blue book, I think it is Standard and Poor's,
yes.
Q To your knowledge, is financial information
concerning NJB publicly available by virtue of the
fact that it is a company which is listed on the
American Stock Exchange?
A Yes.
Q Will you tell us what your approximate
net worth was at the time you purchased a note from
D-Z Investment Company?
A Over three-quarters of a million dollars.
Q I direct your attention to Exhibit 25,
which may or may not be before you.
MR. GIBERT: You can look at this
copy, if you wish.
THE WITHESS. Okay

(By Mr. Marshall) Particularly to the

bottom of page 7, pages 8 and 9 thereof. At the time

Excerpts from Deposition of Seymour P. Weinberg

11

12

13

14

you acquired a note in D-Z, was it your understanding that D-Z was obligated to issue the units? When I refer to the units, I am referring to the unit consisting of four shares of \$100 par value common stock, and a two-year 6 percent promissory note in the sum of \$45,000 which is referred to on page 8 of the private placement memorandum. Was it your understanding D-Z was obligated to issue such units in the future?

A No.

Q Was it your understanding that if D-Z did, in fact, issue such units, that they were obligated to give you a right to participate?

A Yes.

Excerpts from Deposition of Seymour P. Weinberg

87 * * *

Q (By Mr. Marshall) What was your under-
standing, Doctor, concerning your participation in
any new issue that D-Z might come out with? And I
am referring specifically to the units mentioned on
page 8 of the private placement memorandum.

A It was my understanding that I would be given the opportunity to participate in the issuance of these units and would be given priority to participate as a result of my landing them the money.

Excerpts from Deposition of Seymour P. Weinberg

1	MR. MARSHALL: I have no further 88
2	questions.
3	RE-EXAMINATION
4	BY MR. McKENNA:
5	Q Is the net worth of your three-quarters of
6	a million dollars set forth in the financial
7	statement which you gave to the bank?
-8	A Yes.
9	MR. McKENNA: I have no further
10	questions.
11	<u>.</u>
12	
13	SEYMOUR P. WEINBERG, M. D.
14	•
15	Sworn to and subscribed before me,
16	this day of, 1974.
17	
18	
19	Notary Public. My Commission Expires:
20	
21	
22	•

25

23

24

EXCERPT FROM DEFENDANT TRUSTEES' EXHIBIT 7

LETTER FROM WILLIAM P. MILLER OF CANTOR, FITZGERALD & CO. TO BRUCE R. DAVIS DATED APRIL 25, 1974

Canler, Filigerald & Co.,Inc.

INVESTMENT DANKERS

WILLIAM P MILLERI BENIOR VIET PHESIDENS 1345 AVE. OF THE AMENICAS NEW YORK, N. Y. 1001U (2:2) 541-9400

April 25, 1974

Mr. Bruce R. Davis Chairman of the Board Security Management Co., Inc. 420 Fourteenth Street, N.W. Atlanta, Georgia 30319

Dear Bruce:

This letter is intended by the parties to replace prior agreements evidenced by letters of March 22, 1974 and April 16, 1974, and the signatures to this letter will...constitute a rescission of said prior agreements.

This firm shall act on your behalf (or on behalf of your assignce comporation) to perform certain services relating to an intent to acquire an interest in a publicly held real estate related company (the "Company").

In pursuance of that end we will use our best efforts to obtain funds sufficient to permit purchases of shares of the Company on margin (provided such shares are marginable in accordance with applicable rules and regulations) to consummate the transaction or transactions contemplated hereby. In the event you or your said assignee should purchase shares of the Company we shall receive, as an exclusive purchasing agent, a fee equal to 5% of the net purchase price payable in respect of all such shares purchased on your behalf. Said fees shall be payable as in the ordinary course of any securities transactions. You or your assignee shall have no other financial obligation for commission to us or to any broker as a result of such purchases.

RECEIVED
APR 26 1974

BEVERLY HILLS . NEW YORK

SECURITY MANAGEMENT NO.

8,0

1.050

ONLY COPY AVAILABLE



Excerpt from Defendant Trustees' Exhibit ?

Canter, Helyonald & Co. Juo.

April 25, 1974

In addition to the above you shall pay us a fee of \$30,000 at the rate of \$5,000 a month, plus all direct expenses incurred on your behalf after consultation with you on any expenditures aggregating \$1,000 or more. By way of illustration but without intending to limit the nature of such expenses, it is anticipated that such direct expenses shall be comprised of travel, legal, investigatory and similar out-of-pocket expenses. We have to date expended certain amounts on your behalf and as a nonaccountable reimbursement for such expenses, you shall pay us the sum of \$1,000.

In the event that we are unable to obtain margin to consummate the transactions contemplated hereby, you or your assignce may terminate this agreement on written notice, and we shall not be entitled to either the 5% fce on purchases after such termination or to any balance of the \$30,000 fee which has not become payable prior to such termination.

We make no warranties or representation regarding the accuracy and completeness of information supplied by us about the Company or any other concern in which you may express any interest.

If the above accurately sets forth our understanding, please signify your agreement and acceptance by signing two copies of this letter.

Very truly yours,

rulle

William P. Miller Senior Vice President

AGREED TO AND ACCEPTED BY:

SECURITY MANAYEMENT CO., INC.

Bruce R. Davis,

Chairman

A 1730 ONLY COPY AVAILABLE

DEFENDANT TRUSTEES' EXHIBIT 10

SECURITIES AND EXCHANGE COMMISSION, FORM 3, INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

- MAME AND BUSINESS ADDRESS OF REPORTING PERSON	2. STATE OF INCORPORATION	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED	4. NAME OF COMPANY
D-Z INVESTMENT COMPANY	Delaware	MONTH DAT TEAR	NJB PRIME INVESTORS
420 14th Street N.W.	5. IRS OR SE IDENTIFY ING HUMBER OF REPORTING PERSON	6. RELATIONSHIP OF REPORTING PERSON TO COMPANY (Instruction 5)	7. DATE OF EVENT REQUIRING FILING OF THIS STATEMENT
Atlanta, Georgia 30318	58 -0 9092 3 2	More than 10% ber owner	neficial 6 27 va. 1
beneficially owned	sh the information require directly or indirectly by is, options and other righ	curities Beneficially O ed by the following table as the reporting person, includi its or obligations required to (See Instruction 6)	to securities of the company ng transferable warrants but
TITLE OF SECURITIES OWNED (Instruction 9)		3. AMOUNT OWNED DIRECTLY OR INDIRECTLY (Instruction 10)	4. NATURE OF BENEFICIAL DANERSHIP (Instruction II)
Shares of beneficial interest		133,400	Direct
		•	
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DOT			
TRUMENT TO FOR IDENT.			
1/(1/17) 11/10/11/11	nanganina Nama		
٥	建筑	:	//

FORM 3 Initial Statement of Reneficial Ownership of Securities

FORM'S' (Continued)

July 5, 1974

Defendant Trustees' Exhibit 10

TITLE OF SECURITIES SUBJECT TO GPT.ON (Instruction 9)	2. CUSIP NUMBER (FOR SEC USE ONLY)	 3. HATURE OF OPTION HELD (Instruction 12)	4. AMOUNT OF SECURITIES SUBJECT TO OPTION (Instruction 10)	5-PURCHASE OR SALE PRICE OF SECURITIES BUBJECT TO OPTION (Instruction 13)	G. DATE OF EXPIRATION
			•.		
	8			,	
			•		
	1	· Pare			
		•			
planation of items in table.			* U.S. GOVE	AMMENT PRINTING OFFICE: 1973-724-92	11/384 34 SE SE

A 1732 ONLY COPY AVAILABLE

DEFENDANT TRUSTEES' EXHIBIT 18

DAVIS GUARANTY OF LOAN FROM COLUMBIA NATIONAL BANK TO D-Z INVESTMENT COMPANY

Individual or Corporate Gu. anty

	•
•	Chicago, Illinois,
For Walne Acceived, and for	the purpose of enabling
D-Z INVESTMENT COM	PANY
hereinafter called "the Bank," the undersigned he all of the indebtedness and/or liabilities of the del or hereafter to become due, together with the expense shell become due, according to the particular	Columbia National Bank of Chicas, creby jointly and severally egree that in the event any or botor, either as principal or endorser, to the Bank now due penses of collection of same, shall not be paid when the creater relating thereto, the undersigned jointly and ties, promptly upon advice from the Bank that the same
10 02. 300) with interest at the rate of eight p	sand_five_hundredDOLLARS er cent (8%) per annum from maturity until paid. We fur- nses paid or incurred in collecting the said indebtedness
Notice of the acceptance of this guaranty as its existence is hereby waived.	nd of any and all indebtedness or liability created during
bility of the debtor and may release or surrender a according to the sole discretion of said Bank with or liability of the debtor or the substitution of othe may grant renewals and extensions of time on any notes or other contracts to evidence the fame whe all without notice to or consent of the undersigned lessening, or cancelling their oblitations hereund observe, make or give presentment, demand, prot of the obligations hereby guaranteed by the undersigned the making of demand; and the Bank need not first belonging to the debtor in the Bank need not first belonging to the debtor to the Bank until such tir the cancellation of this agreement, to be endorsed cancellation shall be of any effect. Notice of can signed shall remain jointly and severally liable her have theretofore been incurred by the debtor to the	effect as to all existing and fut. indebtedness and/or ne as the undersigned give to the Bank written notice of the hereon by the undersigned and no other notice of the cellation being given in accordance herewith, the underseon only for such indebtedness and/or liabilities as may be Bank together with all interest accumulations, charges
and expenses connected therewith, and as to sugrant the aforesoid renewals, and extensions of the hereof without impairing lessening, or cancelling full. Every right, power and discretion herein grabenefit of any transferce or assignce of any indet guaranty and in the event any such indebtedness.	ch sums, or any per, thereof, the Bank may continue to ine and otherwise proceed in accordance with the termi- this obligation until all of said sums have been paid in ited to the Bank shall extend and apply to and be for the edness incurred by debtor to the Bank covered by this shall be transferred or assigned, every reference herein- s to such indebtedness, the transferee or assignee thereof
· · · Dat	Bruce Davis (Brai
TRUSTET EXILIBIT 18 FOR ISTELL	(Brail
In presence of 7/23/24 1. H. BENJAJIH	(Crai)
William Wille	(0:21
illi Um prin	(Srul
	•
•	(Cini

DEFENDANT TRUSTEES' EXHIBIT 19

STATEMENT OF PURPOSE OF A STOCK SECURED EXTENSION OF CREDIT BY A BANK (FEDERAL RESERVE FORM U-1)

Pet 7 123/24 II. BENEAUM 1/23/24 II. BENEAUM

th Ferm U-1 tev. 6-69

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

STATEMENT OF PURPOSE OF A STOCK-SECURED EXTENSION OF CHEDIT BY A BANK (FEDERAL RESERVE FORM U-1)

FALSE OR DISHONEST STATEMENT BY THE CUSTOMER OR THE OFFICER OF THE BANK ON HIS FORM MAY BE PUNISHABLE BY FINE OR IMPRISONMENT (U.S. CODE, TITLE 15, SECTION 780 AND TITLE 18, SECTION 1001)

TOU AND TITLE TO, SEC.	110.4 1001)
structions:	
 (1) Please print or type (if space is inadequate attach separate she (2) The term "stock" is defined in § 221.3(1) of Regulation U. (3) Part I ,3) and (4) need be filled in only if the purpose of the chase or carry margin stock. (4) In Part II "source of valuation" need be filled in only if such in journal of general circulation. (5) Part II need not be completed in the case of a credit of \$5,000 carrying margin stock. However, in such cases, Part I must be 	he credit described in Part I (1) is o. or than to pur- n source is other than regularly published information or less which is not for the purpose of purchasing or
'ART I (to be completed by customer(s))	
(1) The purpose of this credit in the amount of \$ 62	, 500 secured in whole or in part by
he stock listed in Part II (A) and (B) is (describe in detail))
•	al interest of N.J.B. Prime Inves
•	
(2) This bank, Columbia National Bank, (Name of bank) agreed to extend, to the undersigned, the following credits in	
(itemize and describe briefly, including amounts and collate	eral if any). If none, so state
None	
(3) Is any of the collateral listed in Part II (A) or (B)	to be delivered, or has any such collateral
been delivered, from a bank, broker, dealer, or person other	er than the undersigned? Yes 🖔 No 🗆
If yes, from whom? Cantor, Fitzgerald & Co.,	Inc. Against payment? Yes 🖸 No 🗌
(4) Has any of the collateral listed in Part II (A)	or (B) been owned less than six months?
Yes No If yes, identify all such collateral so owr	ned.
Purchased in May, 1974	
The undersigned has (have) read this form and hereby certificknowledge and belief the information contained on this form D-Z INVESTIGATE COMPANY	is true, accurate, and complete. D-Z INVESTMENT COMPANY
SIGNI:D SIGNI	(Manual alguature) (Detet
Bruce Davis, President	Saul Rocker, Vice President
(Print or type maine)	(l'eint or true neme)

Defendant Trustees' Exhibit 19

CORPORATION

	s of the Board of Directors of D-Z INVESTMENT COMPANY (Name of corporation in full)
ora	tion duly organized and existing under the laws of the State of Delaware (Name of State where organized)
res	olutions were duly adopted at a duly called meeting of the said Board, held on
_, s	quorum being present, and are set forth in the minutes of the said meeting; that I am the porate seal and of the minutes and records of this Corporation; and that the said resolutions rescinded or modified:
	Be It Resolved, that the Columbia National Bank
1	be and hereby is designated a depositary in which the funds of this Corporation may be de-
	posited by its officers, agents, and employes, and that the President.
	Vice Presidents, and Secretary/Treasurer Any Two (2)
•	Vice Frestdents, and Secretary/Treasurer Any Two (2)
1	shall be and each of them hereby is authorized to endorse for deposit or negotiation any and all checks, drafts, notes, bills of exchange, and orders for the payment of money, either belonging to or coming into possession of this Corporation. Endorsements for deposit may be by the written or stamped endorsement of the company without designation of the person making the endorsement.
:	Be It Further Resolved, that the President, Vice Presidents, and
	Secretary/Treasurer Any Two (2)
. •	7.
	Titles of officers and/or other persons authorized to sign checks; e.g.: President, Treasurer, etc.; also picase indicate in what man- ter the above named officers are to sign—single, any two, or jointly, etc.)
	of this Corporation (are) RN authorized to SIGN ANY AND ALL CHECKS, DRAFTS, AND ORDERS, including orders or directions in informal or letter form, against any funds at any time standing to the credit of this Corporation with the said Bank, and/or against any account of this Corporation with the said Bank, and that the said Bank hereby is authorized to honor any and all checks, drafts and orders so signed, including those drawn to the individual order of any such officer and/or other person signing the same, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts and orders, or the proceeds thereof.
	Be It Further Resolved, that the President, Vice Presidents, and
	Secretary/Treasurer Any Two (2)

DEFENDANT TRUSTEES' EXHIBIT 20

SINGLE PAYMENT DEMAND NOTE AND SECURITY AGREEMENT

	OH OF MAND
NOTE AND SECURIT	_
Chapa, Illiana	sed, the undersected 19 teer, posite and sever the promocing pay.
the order of CHILLMAIA NATIONAL BANK OF CLIPAGO II	to temperate the state of the state of the season to the season the season the season that the season the seas
a of	
per cent per annum after date until maturity, payable	and with interest after moturity until paid at the
to of per cent pur atinuin	•
To secure payment of the note to Hark, other existing an I future in	ndebredness and addigations of Debtors, or any of them, Debtors
pely pledge and grant to think a security interest in the fallowing pro-	ingerity.
gether with all other environments of Debtors, or any of them, now or b	
ty heing hereinatter edied "Collateral"). Without waiter of any remedies as also is becomined. Book, at its no	tion, mir, in the event the Californal shall depreciate in value or
Without waver of any functions as olds in information, from, or no or other subject to any observe lien or one in the fine, demand and according to the or of the other	
e Collateral first the most hereurater. The time shall have exercised	remarks the second to the second and produced to the second and the
emed a failure to existing transfer to elect 12 to 150 miles and miles me to time to proving all relies of the Distors and the Brain in the one time to time on it has seen appropriate to minimum or protect.	
on time to time as it that access appropriate the management protection and of Collateral into the management for its representant that collected thereon; that with the tuillaterals tive have processing and controlled thereon;	
impromise or willia art with respect to any of the County L.	
DISCLUSURE S	TATEMENT 9. Default and Definquerky Charges:
. Face Amount of Note	Interest at the rate of to per year will be payable
Prepoid Finante Charge,	on the principal amount of any payment which is not
If any	made when ove, and usen any advances made by Bank
if any	for the account of the Debter(s) to cure Debter(s) defaults. The Debter(s) will also be required to pay costs of collec-
Tetal Precaid Finance Charge and	tion and expenses, including altorneys' fees and legal
Required Deposit Balance, if any	expenses.
Amount Finenced (1 — 2)	
FINANCE CHAZGE	10. Prepayment Penalty, if any.
(for purpose of computing finance	
Charge a domand note is considered to have a monutary of one-half year)	
consists soly of:	11. Rebate of Ungarned Interest upon Prepayment:
Interest	Interest shall cease to accrue on the amount of any
Other	prepayment. There shall be no rebate of any prepaid
i. Total of Payments (3 + 4)	Finance Charge, other than interest. Any unearned interest theretofore collected will be computed proportion-
7. Other Charges, if any, itemized:	ately and rebated when the loan is paid in full.
	Other:
Credit Life Premiums S	_
). Payment Schedule: (Completed item is applicable)	12. Security: This loan is secured by a security interest in
S	
16	the property above described. Bank's security interest
	the property above described. Bank's security interest secures future or other indicateoness and will cover after-
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Described interest payable monthly () on the day of each celendar month () on the day of each celendar month () until demand for payment of the loan. Described interest, as follows: INCURANCE Credit Insurance is not required by Bank nor is if a factor in approval of the loan. No credit insurance will be provided unless Ubbroial sign the autroprists euthorization. Group Credit Insurance is available for the term of the loan at a cost of \$ Bank is authorized to appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promote Debtor and all commandated in appropriate and annie seaund like promoted and annies and all commandated in appropriate and annies seaund like promoted and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and all commandated in appropriate and annies and annies and all commandated in appropriate and annies and annies and annies and annies and annies and annies and annies annies and annies and annies and annies and annies annies and annies annies and annies ann	the property above described. Bank's security interest secures future or other indibarconess and will cover atterescented property. This note contains a contession of judgment clause and grants the Bank the right of set-off or, lien on any deposit or sums now or hereefter owed by Bank to Debtors, endorsers or guarantors. - 13. The Finance Charge will begin to eccrue on the date of disbursement which will be approximately ————————————————————————————————————
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ADDRESSES

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DEFENDANT TRUSTEES' EXHIBIT 21

AFFIDAVIT OF BRUCE R. DAVIS

THE COMMONWEALTH OF MASSACHUSETTS

Why

SUFFOLK, ss.

SUPERIOR COURT EQUITY NO.

D-Z INVESTMENT COMPANY,

Petitioner

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ROBERT E. HOLLOWAY NORMAN BRASSLER MAURICE J. BRICK MELVIN S. TAUB PETER E. SIMON JACK G. TAYLOR CHARLES GILLER JAMES R. MOSELEY, III DALLAS S. TOWNSEND, JR. HERBERT E. HARPER DR. GORDON W. MCKINLEY, as they are the Trustees of NJB PRIME INVESTORS, a Massachusetts Business Trust with transferable shares, Respondents

AFFIDAVIT OF BRUCE R. DAVIS

Bruce R. Davis, being duly sworn, deposes and says:

1. I am the President of D-Z Investment Company ("D-Z"), a

Delaware corporation, which is the holder of record of 200 shares

of beneficial interest in NJB Prime Investors ("NJB"), a Massachubetts business trust, with transferable shares. D-Z is, in addition, the beneficial owner of 77,100 shares of NJB held of record

by Jay & Co. D-Z has filed with the Securities and Exchange

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Commission a Form 13-D, which is annexed to the Bill of Complaint in this proceeding.

- 2. As set forth in the Bill of Complaint, D-Z seeks to inspect and copy a current list of shareholders of NJB. D-Z's purpose is to enable D-Z to communicate with other shareholders of NJB in order to join with them in efforts to influence the management or to obtain control of NJB. D-Z does not intend to sell the list of shareholders or copies thereof, nor to use said list for a purpose other than the interest of D-Z as a shareholder of NJB relative to the affairs of NJB.
- 3. It is urgent that D-Z communicate with the shareholders of NJB with respect to serious matters affecting NJB and its management of which D-Z has become aware. On the basis of published information* relating to NJB, and to Prime Motor Inns, Inc.

 ("Prime"), which is the owner of 49% of NJB Prime Advisors (the "Advisor"), the investment advisor to NJB under a Management and Advisory Contract, there would appear to be self dealing between Prime, the Advisor and NJB to the detriment of NJB and its shareholders. The principal officers of NJB are also officers of Prime and of New Jersey Bank, N.A. (the "Bank"), which owns the remaining 51% interest in the Advisor. On the basis of telephone conversations with management of NJB and a recent inspection of properties

^{*}There will be available to the Court on the hearing of this proceeding copies of filings made by NJB and Prime with the Securities Exchange Commission ("SEC").

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of which NJB is the owner or mortgagee, there are indications that the interests of NJB have been grossly neglected. Attempts to meet personally with management of NJB have been rebuffed. In order to protect its substantial investment in NJB, it is essential that D-Z communicate with other shareholders to decide upon and initiate appropriate protective action.

- 4. In first delaying and then opposing D-Z's efforts to obtain the list of shareholders to which, as I am advised by counsel, it is clearly entitled, management of NJB has deepened my concern that the interests of NJB's shareholders are jeopardized by the self dealing and gross neglect to which I have referred. In seeking to frustrate D-Z's request for the NJB shareholders' list while mailing NJB management's proxy solicitation materials, NJB management asks the aid of the Court in preventing D-Z's communication with other NJB shareholders.
- 5. It is neither necessary nor appropriate in a proceeding to obtain a list of shareholders to attempt to prove in detail that self dealing and gross neglect have in fact occured, nor the extent of damages to shareholders of NJB which have, or may hereafter, result. However, it is significant to note the following areas, based upon documents filed with the SEC and actual inspections of properties under my supervision, which require consultation among shareholders and further investigation:

Defendant Trustees' Exhibit 21

- (a) Prime has sold properties to NJB, immediately following the completion of construction of such properties, at a profit, reflected on Prime's income statement for its fiscal year ended June 30, 1972, in excess of \$1,571,000. Because these properties were leased back to a joint venture of which Prime owns a 50% interest, AICPA rules adopted in June 1973 required that this profit entry be reversed and realized by Prime over the initial lease-back term. However, from the point of view of NJB, it has made cash payments to Prime to acquire these properties, subject to a first mortgage, at a price more than \$1,571,000 in excess of Prime's cost for the properties, and NJB remains entirely dependent on the successful operation of these properties by the joint venture in order to receive payments under its net lease. If the property is not successfully operated, and the lease payments are not made, NJB's investment in these properties is jeopardized. There is reason seriously to question whether the profit realized by Prime at the expense of NJB should be repaid to NJB. However, two of the trustees are themselves officers and substantial stockholders of Prime, and concern exists as to whether the rights of NJB will be vigorously pursued.
- (16) At November 30, 1973, a very substantial portion 1973 ic & Study of the assets of NJB, which would appear to be at least \$17,762,000, in was committed or invested in properties owned and/or operated, (164) directly or indirectly, by Prime and companies in which Prime had (164)

4

Defendant Trustees' Exhibit 21

a substantial interest. There is reason to question the prudence and propriety of these commitments and investments in light of Prime's reported net worth and carnings, as well as the ability of NJB's management to deal at arm's length with respect to them.

- Trust paid \$514,000 as browerage and origination fees to a Prime subsidiary. In the fiscal year ended November 30, 1973, the amount of such payments increased to \$1,024,408. While the Declaration of long trust of NJB purports to permit such payments to affiliates of the Advisor, the existence of the required fairness to NJB and its shareholders of each such payment is open to doubt. I am concerned as to whether the interests of NJB and its shareholders, which may be adverse to the interests of Prime and/or the Advisor, will be vigorously asserted by management of NJB.
- paid advisory fees to the Advisor of \$435,186. In the fiscal

 year ended November 30, 1973, such fees were \$357,969, after a

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Defendant Trustees'

and Prime owned, respectively, 51% and 49% interests in the Advisor, I am concerned as to whether NJB's interests in respect to these fees and refund will be fully protected.

(c) In its financial statements for the period ended November 30, 1973, management of NJB set up reserves for losses Tim SILT. of \$4,302,736. These reserves were set up because of threatened losses, affecting approximately \$15,000,000 loaned to, or invested in real estate leased to, the Walter J. Kassuba interests, on which annual rental of \$1,205,875 is payable to NJB. These properties are apparently subject to senior mortgages aggregating more than \$27,500,000. The Kassuba interests are in reorganization under Chapter XI of the bankruptcy laws of the United States, and no rental has been received by NJB, so far as I am aware, since October of 1973. It is urgent that the Trust take appropriate steps to protect its interests in the properties leased to Kassuba, including arrangements with the first mortgagees of these properties and active participation in the protection and rehabilitation thereof. Another real estate investment company, First Mortgage Investors, has already taken action (as disclosed by the clipping from the Wall Street Journal of March 28, 1974, annexed as Exhibit A hereto) to release the properties in which it is interested from the pending bankruptcy proceeding. Action to this end, with the concurrence of the first mortgagees of the affected properties, is urgently required to protect the interests of NJB

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with respect to its properties which are leased to Kassuba.

Inspection of the NJB properties leased to Kassuba, made at my direction, has disclosed that they are grossly neglected. Other properties of NJB, or in which it has an interest, which have been inspected, also disclose gross neglect. Unless immediate and vigorous action is taken by management of NJB to protect its interest in these properties, not only may the losses reserved against in the November 30, 1973, financial statement of NJB occur, but even greater losses are threatened.

Internal Revenue Code provisions applicable to REIT' 90% of the real estate investment trust taxable income of NJB must be distributed to its shareholders prior to November 30, 1974 (or any earlier regular dividend payment date), pursuant to a dividend declared prior to the filing of NJB's tax return, in order to avoid taxation of NJB as a corporation for the year ended Movember 30, 1973. Since, as I am advised, under applicable tax law, the reserve for losses of \$4,302,736 may not be accepted as a charge against income for tax purposes, NJB management must consider the declaration and payment of a dividend, as aforesaid, in order to avoid disqualification as a REIT for the taxable year ended November 30, 1973, with the resulting imposition of approximately \$2,000,000 of federal corporate income taxes. I have personally expressed my concern, in a telephone conversation

7.

Defendant Trustees' Exhibit 21

with Mr. Robert Holloway. Chairman of the Board of NJB, that means must be thoroughly explored to avoid depletion of the cash available to NJB in the face of its heavy commitments and the scarcity of, and high interest rates applicable to, borrowed money. It is important that prompt action be taken by NJB's management to explore and resolve tax and securities taws questions which must be resolved if declaration and payment of a cash dividend, to the detriment of NJB, is to be avoided.

6. As noted above, a telephone appointment was made on May 8, 1974, for me to meet on Thursday, May 16, 1974, with management of NJB. A copy of my letter, confirming this appointment, is annexed as Exhibit B hereto. By telephone call and telegram on Tuesday. May 14, 1974, this appointment was cancelled. It seems evident that management of NJB does not wish to discuss the remedial action urgently required to end, and make restitution for, the self dealing and gross neglect of NJB's affairs to the detriment of NJB's shareholders. In view of the delaying tactics by which NJB's management has sought to prevent its shareholders from obtaining a list in order to communicate effectively to develop a program for protective action, it became necessary for D-Z to commence this action and to obtain a temporary restraining order to prevent NJB's management from proceeding with the solicitation of proxies for their annual meeting until three days after the shareholders list was delivered to D-Z.

Defendant Trustees' Exhibit 21

7. One of the alternatives which D-Z must seriously consider, in order to protect its interests and that of other shareholders, is the solicitation of proxies for the annual meeting of NJE shareholders presently scheduled to be held on June 13, 1974. In order to evaluate this alternative intelligently, it is essential that D-Z have available a current list of shareholders of NJB. I am advised by counsel that recognition of this urgent necessity resulted in the grant of the temporary restraining order now in effect, requiring that NJB deliver its shareholders list at least three days before mailing materials relating to its June 13, 1974 meeting to shareholders. I respectfully submit that this temporary restraining order should be continued in effect and that the Court should order NJB affirmatively to furnish forthwith a current list of NJB shareholders.

This statement is made under the pains and penalties of perjury.

Bruce R. Davis

DEFENDANT TRUSTEES' EXHIBIT 22

LETTER FROM GEORGESON & CO. TO BRUCE R. DAVIS OF D-Z INVESTMENT COMPANY DATED MAY 28, 1974

GEORGESON & CO.

100 WALL STEET, NEW YORK, N.Y. 10005 - 1212 422 1470

May 28, 1974

Mr. Bruce R. Davis,
President
D-Z Investment Company
420 14th Street N.W.
A anta, Georgia 30318

RECEIVED
MAY 30 1974

Dear Mr. Davis:

SECURITY MANAGEMENT CO.

L enjoyed the opportunity of meeting you and your associates and we are looking forward to working with you in connection with your investment in N.J. B. Prime Investors.

This letter sets forth the terms and conditions under which you will employ us as consultant or advisor and to solicit proxies from stockholders of N.J.B. Prime Investors in connection with an adjournment, if any, of the sumual meeting of that company scheduled for June 13, 1974, or a special meeting called within six months of the date hereof.

- (a) The solicitation services we will perform on your behalf will include the solicitation of proxics from (1) brokers, bank nominees and other institutional holders (including the delivery of the proxy soliciting material to such holders for distribution to the beneficial owners); and (2) individual holders of record.
- (b) For our services, you will pay us the sum of \$25,000, which sum will include our expenses in providing the above services. (1) The sum of \$5,000 shall be paid upon the execution of this agreement. (2) An additional sum of \$5,000 shall be payable at such time as active preparation for the conduct of proxy solicitation shall commence. (3) The balance shall be payable upon the conclusion of our solicitation of stockholders on your behalf.
- (c) We agree to check, itemize and pay, for your a pkers' and banks' charges for forwarding proxy soliciting material to efficial owners and for obtaining voting instructions, including cost of cables, telegrams, and telephone calls when necessary, for which service you will pay us fifty cents for each broker and bank invoice paid by us. Funds advanced by us in payment of such charges are not included in the amount stated in paragraph (b) above and will be billed to you separately.
- (d) You will reimburse us for printing costs of supplementary proxy material paid by us for your account, for material and postage supplied to brokers and banks in connection with the solicitation of beneficial owners, for postage and freight charges incurred in delivery of material outside New York City, for any costs relating to the computerization of the stockholder list and for any other expenses or disbursements authorized by you.

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Defendant Trustees' Exhibit 22

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(e) You represent to us that you will comply with, and we represent to you that we will comply with, applicable requirements of law relating to the solicitation of proxics for such meeting.

If the above is agreed to by you, please sign and return the enclosed duplicate of this letter.

ACCEPTED:

Very truly yours,

D-Z Investment Company

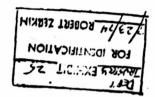
GEORGESON & CO.

J William Robinson

DEFENDANT TRUSTEES' EXHIBIT 25

LETTER FROM BRUCE R. DAVIS TO MORGAN GUARANTY TRUST COMPANY DATED MARCH 15, 1974





SECURITY MANAGEMENT

March 15, 1974

Mr. Jacob M. Cath Morgan Guaranty Trust Company 23 Wall Street New York, New York 10005

RE: Tender for Beneficial Shares of a Realty Investment Trust

Dear Mr. Cath:

I appreciated your time and comments during our meeting on Tuesday relative to formulating a plan to tender for the shares of beneficial interest of a real estate investment trust. The following is an outline of my thinking and plans for the tender:

The REIT's are under terrific pressure today due to mounting problems with various loans in their portfolios. The accountants are scrutinizing the loans very carefully and requiring large reserves to be established which previously were not required. The establishment of the reserves has cut deeply into the earnings of the trusts. The public has become disenchanted and the stocks of many of the REIT's are selling at from 40% to 60% of their book value.

The entire concept of REIT's is not realistic in that an entity cannot continue to loan their money in high-yielding and high-risk loans, increase their earnings each period, and pay out 90% of what they carn. The more loans being made the more risk of loss and without proper reserves and retained earnings to fall back on, they will eventually run into trouble, which is what is happening today. In addition, the trust personnel are not

Defendant Trustees' Exhibit 25

Mr. Jacob M. Cath March 15, 1974 Page 2

capable of salvaging trouble loans without looking to outsiders and since they have made their loans in so many different geographic areas, administration of the loans is a fantastic undertaking.

I have made a careful study of various REIT's which have a market value of between 40% to 60% of book value. In every instance, the holders of beneficial interest were a large group of people ranging in the thousands with no one owning more than 1% or 2% of the outstanding shares. In addition, the advisors to the trust, and for all practical matters the controlling interest of the trust, hold little or no shares of beneficial interest.

The advisors have made substantial fees for managing the assets of the trust and, in addition, have related mortgage companies which derive additional fees for placing mortgage loans with the trust. The advisors, in an attempt to maintain increased earnings, have leveraged the trust's equity and in 1973 got caught with increased interest costs as commercial prime rose. Also, in their desire to increase earnings, they became lax in their requirement as it relates to the borrowers and this, coupled with geographic problems, made proper loan administration difficult. To compound this, the increase in interest rate caught many developers unprepared and unable to make good on their loans as they matured. Due to the rapid growth of the industry, personnel became a major problem and the trusts were unable to staff properly. When all these factors occur, you arrive at the current troubled situation of the trusts.

I do feel that most loans, with proper administration, can be salvaged at par and with this in mind it is my opinion that if a successful tender could be made for the shares of beneficial interest, you would be buying dollars for 40% to 60% of the dollar.

I have chosen three trusts as candidates and once the necessary funds are arranged, one will be chosen. As I previously stated, each is selling at 40% to 60% of its book value and a tender at 120% to 130% of market value would still keep the price below 60% of book value. The total dollars needed would range between \$5 million and \$7 million.

Defendant Trustees' Exhibit 25

Mr. Jacob M. Cath March 15, 1974 Page 3

I propose that a surprise tender be made. Due to the substantial fees the advisor earns, he will most likely be unfriendly. The stock price of the trusts is about 40% to 60% of the original offering price and/or the market price of one year ago. The trusts are organized in Massachusetts, which allows any shareholder access to the stock records of the company. This enables us to have a listing by name, address, and percent of ownership for each shareholder.

I propose that our company will fund the first \$1 million needed. Our money will be used to absorb all front end expenses of the tender in the event of success or failure. The balance of the funds would be provided by the investors who would have a debt and equity position. The details of the arrangement would have to be negotiated.

Initially, we would tender for a minimum of 51% of the shares of beneficial interest. Absolute control of the trust would be in the hands of those owning 51% of the shares. We would also want to comply with the IRS rulings as they apply to ownership so as to not initially destroy the tax status of the trust. If we are successful in our tender, it would be my idea to allow the advisor to continue for some period of time so that problem loans could be worked out and if there was any lack of due diligence in the origination of the loan or its administration, that responsibility would be with the advisor. We would, of course, assist in helping to cure problem and by using our expertise in the development field. Our company develops apartments and condominiums and presently manages in excess of 4,000 apartments.

At some point in time, we would cancel the advisory contract. All the advisory contracts are for a period of one year and can be canceled by the trust upon 60 days notice. We would install our people as the trustees of the trust and, in addition, form our own advisory company.

By maintaining the trust status, the servicing of the debt incurred in the acquisition of the trust can be accomplished via the trust's earnings which are passed through to the shareholders.

Defendant Trustees' Exhibit 25

Mr. Jacob Cath March 15, 1974 Page 4

The next step would be to gain voting control of 66-2/3% of the outstanding shares and vote to eliminate the trust type of ownership. It requires a 66-2/3% vote to convert the trust to a regular corporation. Once this is accomplished, I would envision seeking real estate loans with equity participation. In addition, I would use the corporation as a vehicle to tender for other trusts which meet the percentage criteria of market value to book value and have acceptable loan portfolios.

It is also my intention to merge our operating company into the corporation on a stock-for-stock basis. Prior to the merger I would contribute our stock in the trust to the corporation so that when the merger is concluded, the stock and related debt would be assumed by the corporation. The corporation has sufficient value and assets to retire the original indebtedness.

The end result would be a public corporation with a strong equity position, good management, and a new direction. All of the foregoing can be accomplished with discounted dollars.

It is my opinion that this entire plan, if possible, should be put into motion as promptly as possible since the trusts are under the greatest pressure today and no one has yet come forward with this type of plan.

I think the above is a fairly complete outline of the procedures and of my thoughts. If there is any additional information or any clarification of the ideas needed, please contact me.

I would appreciate your advising me of your thoughts relating to this matter.

Yours very truly,

BRUCE R. DAVIS Chairman of the Board

DEFENDANT TRUSTEES' EXHIBIT 28

LETTER FROM LAWRENCE ORBE OF CANTOR, FITZGERALD & CO.
TO BRUCE R. DAVIS DATED MARCH 22, 1974

Canlor, Filzyerald & Co., Inc.

NEW YORK, N.T. 10019 (212) 541-8400

March 22, 1974

Mr. Bruce R. Davis
Chairman of the Board
Security Management Company
420 Fourteenth St., N.W.
Atlanta, Georgia 30318

Dear Bruce:

Pursuant to our continuing negotiations regarding the possible acquisition by you of a Real Estate Investment Trust, the following will serve as our fee arrangements with you and/or your company.

- 1. Cantor, Fitzgerald & Co., Inc. shall receive an initial expense allowance of \$2,500.
- 2. If we assist you in arranging the financing required to complete such transaction, our compensation shall be 5% of the first million dollars, 4% of the second million dollars, 3% of the third million dollars, 2% of the fourth million dollars, 1% of the fifth million dollars, and 1% thereafter.
- 3. If the acquisition program involves a tender offer, we shall be Dealer-Manager and shall receive compensation to be negotiated for such role (customarily such compensation is on an expense allowance plus a per share basis times the number of shares tendered for and successfully received.
- 4. If we find an appropriate acquisition candidate, we shall look to separate compensation for such role based on the formula in number two above.

FOR IFICATION

7/22/14/KOSERT ZURKIN

Defendant Trustees' Exhibit 28

Canter, Filzgeruld & Co. Ino.

Mr. Bruce r. Davis

-2-

March 22, 1974

If the understanding meets with your approval, please initial a copy in the space provided below.

Sincerely,

Lawrence .. Orbe III Vice President

LFO: byb

AGREED TO AND ACCEPTED BY:

Bruce R. Davis

DEFENDANT TRUSTEES' EXHIBIT 30

LETTER FROM WILLIAM P. MILLER OF CANTOR FITZGERALD & CO. TO BRUCE R. DAVIS DATED APRIL 16, 1974

despriet.

April 16, 1974

Mr. Bruce R. Davis Chairman of the Board Security Management Company 420 Fourteenth St., Naw. Atlanta, Georgia 30318

Dear Bruce:

This letter is intended to amend our prior letter of agreement dated March 22, 1974 and is hereby incorporated therein and nade a part thereof by collateral reference. The terms and conditions of said March 22nd letter shall continue except that paragraph one thereof is hereby deleted and replaced by the following paragraph.

1. Cantor, Fitzgerald & Co., Inc. shall represent you and give advice and consultation relating to obtaining centrol of a publicly owned real estate related company. You shall now this firm a fee of six, and at the rate of \$5,000 a month for a period of six months from the date of this letter. In addition to the aforesaid fee of \$30,000 you shall, as statements are rendered, reimburse this firm for all direct expenses incurred on your behalf. You shall with the signing of this letter renit to us one month's fee, plus the sum of \$1,000 representing reimbursement for initial expenses already incurred by us on your behalf.

If this amendment moots with your approval, please sign a copy in the space provided below and return to me.

Very truly yours,

William P. Miller, Senior Vice President

AGREED TO AND ACCEPTED BY:

Bruce it. Davis

ONLY COPY AVAILABLE

FOR SECUTION

1754

DEFENDANT TRUSTEES' EXHIBIT 34

LETTER FROM BRUCE R. DAVIS TO COLUMBIA NATIONAL BANK OF CHICAGO DATED JUNE 18, 1974

Deft. Trustee 34 Id 7-24-74

with maintend to extend the star of the last int

June 18, 1974

Mr. Burton L. Gordon, President
Columbia National Bank of Chicago 5250 N. Harlem Avenue Chicago, Illinois 60656

Re: 25.000 shares NJB Prime Investors

Dear Mr. Gordon:
Please receive from my account, held at Cantor, Fitzgerald & Co., Inc., 232 North Canon Drive, Beverly Hills, California, for the account of D-Z Investment Company, 25,000 Certificates of Beneficial Interest of NJB Prime Investors versus a loan of \$62,500.

The funds are to be paid to Cantor, Pitzgerald & Co., Inc. upon the receipt of the Certificates by you or your dosignee.

I have previously executed loan forms which have been transmitted to you.

> Very truly yours, Mary Control of the State of th

> > Bruce R. Davis Prosident

Mr. Michael Ford

ONLY COPY AVAILABLE

DEFENDANT TRUSTEES' EXHIBIT 35

D-Z INVESTMENT COMPANY CUSTOMER'S AGREEMENT WITH

CANTOR, FITZGERALD & CO., INC. LIMITED FOWER OF ATTORNEY CANTOR, FITZGERALD & CO., INC. 212 Camen Iring Leverly Halls, Calfornia 90210 Thereby authoris: JOSMPH B. RUSSELL (whose situature topears below) Theorety attractors — (where separative appears below) and appears and attract and attractors and any other securates and/or any other securates and/or as my agent and accountracts relating to the same on margin or otherwise in accordance with your factors and conditions for consocities and/or contracts relating to the same on margin or otherwise in accordance with your factors and conditions for my account and risk and in my name, or compart on your blocks. I hereby name to indemnify and hold you harmless from and to pay you promptly on demand any and all louis arming therefrom or debit balance due thereon, In all such priceleses, sales or trades you are authorized to follow the instructions of said agent and attorney in fact in in an men processor, the or traces you are destroyed in the continuents of the open and attorney in Tact in every respect concerning the account with you; and he is authorized to act for me and in my behalf in the same manner and every respect concerning the account only you, and he is authorized to such our are and in my casual in the same manaca and onth the same finite and effect as I might or could do with respect to such purchases, sales or tradernowell as with propoci to all other things necessary or incidental to the furtherance or conduct of such purchases, takes or teades. thereby ratify and confirm any and air transactions with you heretofore or hereafter made by the aforesaid agent or for The authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any miner agreement or agreements between your firm and me. This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by me by a britten nutice addressed to and actually received by you, but such reviewing shall not affect any liability in any way resulting from transactions unitated prior to such revocation. This authorization and indemnity shall intere to the benefit of your present company and of any successor company or companies arrespective of any change or changes at any time in the personnel thereof for any cause whatsuever, and of the assigns of your present company or any successur company. D-Z Taves Tent Company FP : 10 relita Bruce R. Davis, President CANTOR, FITZGERALD & CO., INC. NEW ACCOUNT INFORMATION Legal[] Lir. D-Z Investment Company Name[] Mrs. C/O Rubin Wachtel Enum & Levin Ulter Atra Juscell Pousell Esq Send [] Howner Address __ To Clinings Address 598 Nadison Avenue City New York Citystee N Y 10022 Daniel [] Signife [] Alsove 21 Years of Age: Yes D No D US. Citizen: Yes [] No [] If No, a citizen of: ___ Type of Business If the ried woman please complete History's name Pank Hater nee | Nitional Cank of CA Smin Office IAUUHESS Other Bird crape or Busines l'elerence Coveral Histories on Delivery Instructions I Herchy flag report that the Information Contained above is true and correct. Investment Company D-X Xny ONLY COPY AVAILABLE

Defendant Trustees' Exhibit 35

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CUSTOMERS AGREEMENT

CANTOR, HITTGER SEDIE CO., INC.

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EXHIBIT 4

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY HAROLD B. LEVIN ON APRIL 29, 1974

D-Z INVESTMENT COMPANY
6% PROMISSORY NOTE
DUE MARCH 31, 1975

Atlanta, Georgia

\$ 50,000

24 (Mrs. 1974

COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of hareas in the principal amount of the state of Delaware, hereby promises to pay to amount of the state of Delaware, hereby promises to pay to the order of the state of Delaware, the principal amount of the state of the state of the principal on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RESALE. NO SUCH NOTE MAY BE SOLD, OFFERED FOR SALE, ASSIGNED, OR TRANSFERRED UNLESS A REGISTRATION STATEMENT UNDER THE FROMBAL SECURITIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

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Exhibit 4

RESPECT TO THIS PROMISSORY NOTE, IS THEN IN EFFECT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS IS THEN IN FACT APPLICABLE TO SUCH PROMIS-SORY NOTE.

1.

Payment of principal and interest due and payable hereunder shall be made in lawful money of the United States of America at the principal office of the corporation.

2.

This Note is one of an authorized issue of six (6%) per cent notes of the Corporation due March 31, 1975 (hereinafter referred to as the "Notes") of the aggregate principal amount of \$1,250,000 Dollars, all of like tenor (except as to denomination) all of which Notes are entitled to the benefits and subject to the terms hereof, duly authorized by resolution of the Board of Directors of the Corporation adopted April 24, 1974. All of these Notes are and shall for all and any purposes be treated as Notes of the same series.

3.

Redemption.

- (a) The Notes shall be redeemable at the option of the Corporation in whole or in part at any time or from time to time, at par plus accrued interest to the redemption date.
- (b) Notice of any redemption shall be given by mail, not less than ten (10) days nor more than thirty (30) days, prior to the date fixed for the redemption, to the named payees of the Notes at their addresses as appearing in the records of the Corporation, or in the event that any of these Notes have been assigned or otherwise transferred and if the Corporation has been notified of the name and address of such transferee, notice hereunder shall be given by mail to such transferee.

Exhibit 4

- (c) In case of the redemption of part only of a Note, the notice provided for herein shall specify the portion of the face amount being redeemed; and upon payment of the portion redeemed, the Note shall be cancelled and a new Note, of like tenor, issued for the unredeemed balance, all at the expense of the Corporation.
- (d) If this Note or part thereof shall be called for redemption and notice of redemption shall be given as aforesaid, interest shall cease to accrue from and after the redemption date on this Note or the part hereof so called for redemption (unless default shall be made in the payment of the redemption price upon presentation and surrender hereof).

4.

All of the Notes constituting this series shall rank pari passu without preference or priority of any kind over one another, and all and any payments on account of principal or interest (whether redemptions, prepayment, purchase by the Corporation or any other type of payments) shall be applied ratably and proportionally on all outstanding Notes of this series on the basis of the principal amount of indebtedness represented thereby.

5.

Voluntary or Involuntary Breach of the Corporate Obligation.

The following shall constitute acts of Default under this Note:

- (a) If default shall be made in the payment of the principal and interest of any of these Notes when and as the same shall become due and payable, or in the observance of any other covenant herein contained;
- (b) Upon appointment of a reciever, conservator, or liquidator of or for the Corporation, or of or for a substantial part of the property of the Corporation, whether voluntary or involuntary;

Exhibit 4

- (c) Upon the making of an application for any aforesaid appointment, or upon the suspension or discontinuance of the business of the Corporation or the making of an assignment for the benefit of creditors or composition with creditors;
- (d) Upon the adjudication of the Corporation as insolvent, or upon the filing of a voluntary or involuntary petition in bankruptcy, or for a bankruptcy composition or extension, or the approval of any other petition pursuant to the provisions of the Bankruptcy Act of the United States of America, as last amended, by or against the Corporation;
- (e) Upon any part of the business or property of the Corporation being taken possession of, or closed, by any authorized governmental agent or body, or by any procedure authorized by law; or
- (f) Upon the Corporation becoming the subject of liquidation or dissolution proceedings.

6.

The Corporation may deem and treat the person in whose name any Note shall be registered in the records of the Corporation as the absolute owner of such Note for the purpose of receipt and payment of principal or interest on such Note and for all other purposes, provided, however, that upon receipt of written notice from a registered holder of any of these Notes stating that he has transferred his Note and stating the name and address of his transferee, the Corporation shall register such transferee as holder of the Note, and, further, upon request by any transferee of any of these Notes, the Corporation shall cancel the transferred Note upon its surrender to the Corporation and immediately thereafter reissue to the surrendering transferee a Note of like tenor showing said transferee as payee, all at the expense of the Corporation.

7.

The Corporation covenants and agrees that no dividend of any kind or character (except stock dividends) will be

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Exhibit 4

declared or paid on any share or shares of stock of the Corporation until such time as all of these Notes are paid in full or the Holders of a majority in amount of these Notes have consented to such dividends in waiting.

8.

In the event that any of the Holders employ an Attorney-at-Law to collect any amounts past due under the terms of these Notes, the Corporation hereby covenants to pay to said Note holder(s) in addition to all other amounts payable hereunder, the actual expenditures, including reasonable attorneys' fees not to exceed 15% of the unpaid balance, to secure or collect any amounts due hereunder.

9.

None of the Note holders shall be deemed to have waived any of their rights or remedies hereunder unless such waiver is made in writing duly signed by the particular Note holder or his duly authorized agent.

10.

The terms and conditions of this Note shall be binding upon and enure to the benefit of the Corporation and its successors and assigns, and the Mote holders and their respective heirs, personal representatives and assigns.

11.

Nothing herein shall impair the obligation of the Corporation, which is absolute and unconditional to pay the principal and interest on these Notes in accordance with their terms.

12.

The Corporation and the Note Holders may at any time creafter modify this Note by a further written instrument, signed by Holders owning 66 2/3% of the outstanding

Exhibit 4

amount of these Notes. These Notes shall not, however, be deemed modified in any particular by any act of the Corporation or of any of the Note holders except by such agreement in writing signed by said Note holders.

13.

These Notes are unsecured except that Jerome Zimmerman and Security Management Co., Inc., the present sole shareholders of the Corporation, have deposited their shares in Escrow as security for the payment of these Notes pursuant to an Escrow Agreement dated as of the 24th day of April, 1974.

14.

If any provision or any part of any provision of this Note or if the application of any provision or of any part of any provision to any situation shall be determined by any Court having proper jurisdiction to be invalid, illegal or unenforceable, the remainder of this Note and the application of such provision or such part of a provision to other situations shall not be affected thereby, but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or part of a provision or applications thereof were not originally a part hereof. The Corporation waives presentment, demand, protest and notice of demand, protest and nonpayment except Holder shall take no action for any default hereunder until ten (10) days after receipt by the Corporation of written notice of any such default and failure to cure same by the Corporation within said ten (10) day period.

IN WITNESS WHEREOF, D-Z INVESTMENT COMPANY has caused this Note to be signed by its President, and its corporate seal to be affixed hereto and attested by its

Exhibit 4

Secretary,	and	this	Note	to	bc	dated	as	of	the	29 10
Secretary, day of	wil				, 1	974.				

D-Z INVESTMENT COMPANY

BY:

PRESIDENT

CORPORATE SEAL

ATTEST:

' \

Secretary

EXCERPTS FROM EXHIBIT 14

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY BERNARD KROLL ON APRIL 30, 1974

D-Z INVESTMENT COMPANY
6% PROMISSORY NOTE
DUE MARCH 31, 1975

\$50,000

Atlanta, Georgia
3 CCbcc , 1974

COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of FRAMED KRULL , the principal amount of The Thereford Amount of The Thereford Thereford Dollars (\$50 cm) on March 31, 1975, with interest (computed on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RESALE. NO SUCH NOTE MAY BE SOLD, OFFERED FOR SALE, AGSTONED, OR TRANSFERMED UNLESS A RUGISTALISM ATATEMENT UNDER THE FEDERAL SECURITIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

EX. 14 Dry 8 KROLL 11/9/74

Excerpts from Exhibit 14

Secretary, and this Note to be dated as of the 30 h

D-Z INVESTMENT COMPANY

BY: John

PRESIDENT

CORPORATE SEAL

ATTEST:

BY: ///

(Vast Secretary

EXCERPTS FROM EXHIBIT 15

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY BERNARD KROLL ON MAY 16, 1974

D-Z INVESTMENT COMPANY

6% PROMISSORY NOTE

DUE MARCH 31, 1975

Atlanta, Georgia

\$ <u>51 600 ee</u>

16 May , 1974

COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of FORMARD FOLL , the principal amount of FORMARD FOLL , the principal on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RESALE. NO SUCH NOTE MAY BE SOLD, OFFERED FOR SALE, ASSIGNED, OR TRANSFERRED UNLESS A REGISTRATION STATEMENT UNDER THE FEDERAL COURTTIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

EX 15 omb Dy 7 Keace 07/19/74

Excerpts from Exhibit 15

Secretary, and this Note to be day of,	e dated as of the
	D-Z INVESTMENT COMPANY
	PRESIDENT

CORPORATE SEAL

ATTEST:

-- \ X.

1557 Secretary

EXCERPTS FROM EXHIBIT 16

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY MAX SOPHIER ON APRIL 30, 1974

D-Z INVESTMENT COMPANY
6% PROMISSORY NOTE
DUE MARCH 31, 1975

Atlanta, Georgia

\$ 2010000

BC APEIL, 1974

COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Bourower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of hand the laws of the State of Delaware, hereby promises to pay to the order of hand the laws of the State of Delaware, hereby promises to pay to the order of hand the principal amount of the laws of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RESALE. NO SUCH NOTE MAY BE SOLD, OFFERED FOR SALE, ASSIGNED, OR TRANSFERRED UNLESS A DEGISCRATION STATEMENT UNDER THE FEBRUAR SECURITIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

EX. 16 FOR SOFFICE

Excerpts from Exhibit 16

Sec:	of (that	his Note to b	ne dated as of the BUILD 32,
<u></u>		,	D-Z INVESTMENT COMPANY
		•	PRESIDENT

CORPORATE SEAL

ATTEST:

BY: Secretary

EXCERPTS FROM EXHIBIT 19

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY HAROLD A. LEVOW ON APRIL 30, 1974

D-Z INVESTMENT COMPANY
6% PROHISSORY NOTE
DUE MARCH 31, 1975

Atlanta, Georgia

3.0 APRIL, 1974

\$ 50,000 °C

COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of HARCLD A. LEVOW, the principal amount of Fifth Dollars

(\$ 0) on March 31, 1975, with interest (computed on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the entent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RUSALE. NO SUCH NOTE MAY BE SOLD, OFFERED FOR SALE, ASSIGNED, OR TRANSFERRED UNLESS A REGISTRATION STATEMENT UNDER THE FEDERAL SECURITIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

ONLY CUPY AVAILABLE

EX.19 Dip of Levow

Excerpts from Exhibit 19

Secr	of 1	and this	Note	to	be	dated	as	of	t:he	30	4h
day	or 11	1510-			, 19)74.					-

D-Z INVESTMENT GOSFANY

BY: /J

PRESIDEAT

CORPORATE SEAL

ATTEST:

BY: Mitmer Symunous

Cart Secretary

EXCERPTS FROM EXHIBIT 22

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY HARVEY JACOBSON ON APRIL 30, 1974

D-2 INVESTMENT COMPANY

6% PROMISSORY NOTE

DUE MARCH 31, 1975

Atlanta, Georgia

3c APRIL , 1974

\$50,000

COMPANY (hereinalter sometimes referred to as the "Comporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of HARVEY JACCBSON, the principal amount of FIGTS THESAMO (NO ASSESS DELAWARD) Dellars (\$50,000) on March 31, 1975, with interest (computed on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest; if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

THIS PROMISSORY NOTE IS A SECURITY WITHIN THE MEANING OF THE FEDERAL AND GEORGIA SECURITIES LAWS. IT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OR THE SECURITIES ACT OF ANY STATE. THIS PROMISSORY NOTE IS BEING ACQUIRED BY THE HOLDER FOR INVESTMENT PURPOSES ONLY AND NOT FOR RESALE. NO SUCH MOTE MAY BE SOLD, OFFERED FOR SALE, ASSIGNED, OR TRANSFERRED UNLESS A REGISTRATION STATEMENT UNDER THE FEDERAL SECURITIES ACT AND APPLICABLE STATE SECURITIES ACTS, WITH

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Ex 22 - Jacobsm 7-22=14 55N

Excerpts from Exhibit 22

Secretary, and this Note to be dated as of the 3140 day of APRAL , 1974.

D-Z THVESPMENT COLFAY

BY:

PRESIDEN

CORPORATE SEAL

ATTEST:

()

Asst Secretary

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EXCERPTS FROM EXHIBIT 26

D-Z INVESTMENT COMPANY, \$50,000 6% PROMISSORY NOTE PURCHASED BY SEYMOUR P. WEINBERG ON MAY 8, 1974

D-2 INVESTMENT COMPANY
6% PROMISSORY NOTE
DUE MARCH 31, 1975

Atlanta, Georgia

\$50,000

8 May, 1974

FOR VALUE RECEIVED, the undersigned D-Z INVESTMENT COMPANY (hereinafter sometimes referred to as the "Corporation" or the "Borrower") a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to the order of Science P Verice of the principal amount of The Investment And Orling Dollars (SSC CCC)) on March 31, 1975, with interest (computed on the basis of a 365 day year) on the unpaid balance of such principal amount from the date hereof at the rate of six (6%) per cent per annum until the same shall become due and payable, and with interest on any overdue principal and on any overdue interest, if any be due and payable (to the extent permitted under applicable law), at the rate of ten (10%) per cent per annum, payable on demand.

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DEA DA. WENTER

Excerpts from Exhibit 26

Secretary, and day of	this Note to be		2.47
		D-Z INVESTMENT	COMPANY
		PRESIDENT	

CORPORATE SEAL

ATTEST:

BY: Manue Thanks

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of the within APPENDIX is hereby admitted this 167% day of SEFTER CAN 1974 ALFRey STOR A PPALLE